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Report of the Commission of Inquiry into Events of March 18, 1996 at Queen's Park



Willard Z. Estey, Q.C.
Commissioner
1996

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Commission of Inquiry into
Report of the Commission of
Inquiry into Events of March
18, 1996 at Queen's Park

DATE

ISSUED TO

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TO THE ATTORNEY GENERAL OF ONTARIO

Dear Mr. Attorney General:

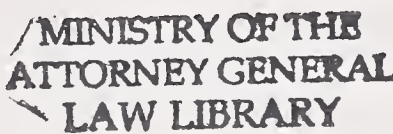
As the Commissioner appointed in accordance with the terms of the Order-in-Council dated 17 April, 1996 to inquire into the events of 18 March, 1996 and the circumstances leading up to them, I respectfully submit herewith the Commission's findings and recommendations.



Commissioner

22 October, 1996

**AN INQUIRY INTO THE EVENTS AT QUEEN'S PARK,
TORONTO, ON 18 MARCH 1996
(and the circumstances leading up to those events)**

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AN INQUIRY INTO THE EVENTS AT QUEEN'S PARK,

TORONTO, ON 18 MARCH 1996

(and the circumstances leading up to those events)

FOREWORD

1. In the preparation for and conduct of this inquiry I am indebted to a very small inquiry staff assembled on short notice. Almost from the day of appointment of the Commission this staff was engaged in the collection of documents and interviews of witnesses preparatory to hearings, the conduct of hearings lasting in all about twenty-eight days and the compilation of evidence and exhibits for use in preparing the Commission Report.

2. The records, including correspondence and minutes of meetings, were scattered in the files of the various departments of government, the two police forces and the Speaker's staff offices. We also were engaged in locating and receiving from television stations and networks and the two police forces, films of tapes recording the events of the 18th of March.

3. The investigation and organization of this hearing fell entirely upon Commission Counsel, Mr. Peter F.C. Howard of Stikeman, Elliott, Toronto. Mr. Howard was ably assisted by Mr. Nicholas McHaffie of the same firm.

4. The hearing room and offices were supplied complete with a small but effective staff organized under Mr. Roland d'Abadie. These facilities were organized on extremely short notice for hearings which commenced on the 13th day of May, 1996. Mr. d'Abadie and his staff produced overnight a sound amplification system in the hearing room and a recording facility from which the staff produced a typed transcript. The Commission is indebted to its small and overworked staff of Elizabeth Brooker, Commission secretary/Administrative assistant, Nicole Niles, Office clerk/receptionist, Mary Bandera, Court Registrar and Merv Buck, Court Services Officer.

5. Counsel appeared before the Commission of Inquiry for the Speaker - Mr. Neil Finklestein and Mr. Mark Katz (Blake, Cassels & Graydon); for the Province of Ontario - Mr. Bryan Finlay, Q.C., Mr. T.G. Richards and K. Snell (Weir & Foulds); for OPSEU and the Ontario Federation of Labour - Mr. C. Michael Mitchell and Judith McCormack (Sack Goldblatt & Mitchell); for Inspector Hope of the OPP - Mr. Norman A. Peel, Q.C.;

... for the OPP and OPGS - Ms. Eleanor A. Cronk and Mr. Richard Swan (Fasken, Campbell, Godfrey); for the Metropolitan Toronto Police Service and Chief of Police - Mr. Jerome F. Wiley, Q.C.; for the Metropolitan Toronto Police Services Board - Mr. Robert Baldwin; for the Ontario Provincial Police Association - Mr. W. Michael Temple, Q.C. and P.C. Norman; for the Progressive Conservative Caucus of Ontario - Mr. David Humphrey (Greenspan, Humphrey); and for the Police Complaints Commissioner - Mr. William Manuel and Ms Christina Donszelmann.

6. Counsel for the Commission and for the parties above, examined and cross-examined all witnesses appearing before the Commission. The evidence could not have been taken and recorded on the scale necessary here except for the professional conduct of each counsel in conforming to the proper limits of examination and cross-examination of witnesses.

7. In the course of the conduct of these hearings and to facilitate participation by various counsel for parties interested, Messrs. Howard and McHaffie prepared a summary or outline of the principal evidence and prepared and circulated to counsel a catalogue of the principal and subsidiary issues arising from the evidence.

8. We are grateful for the co-operation extended to the Commission by the staffs of the police forces, the Province of Ontario and OPSEU and the OFL. The television broadcasters, principally CBC, CFTO, CITY and Global Television were likewise most co-operative in providing VCR copies of the material broadcast on and after the 18th of March relating to the activities at Queen's Park.

9. We were fortunate in having Mr. Roland d'Abadie who assembled the office staff for the Commission including a registrar, secretary to the Commission and personnel who quickly organized the equipment required for the copying of the extensive documentation collected by the Commission. This staff also attended to the transcription of the evidence taken. Mr. d'Abadie has broad experience in staffing, housing and supplying equipment and the staff required for the rapid commencement of the public hearings.

10. In order to allow the press to report the hearings with the least inconvenience to the Commission, counsel and the journalists themselves, a co-operative broadcast pickup was established by the industry and operated from a room adjoining the hearing. This facility was established and operated without any interruption or inconvenience to witnesses or counsel at these proceedings. It also should be noted that all this was done without any expense to the taxpayer.

11. For all the work, co-operation, forbearance and kindness of these many people and organizations I thank them one and all.

SUMMARY

12. The Commission wishes to state one fundamental truth as plainly and as forcefully as possible at the very outset of this report. No one has the right to impede the access of an MPP seeking to enter the Legislature to represent his or her constituency, be it by picket line, demonstration or otherwise. It is simply wrong to do so and breaches an important principle highly valued in our democratic system. The attempt to do this was the original sin from which all other transgressions that occurred in this matter flowed. The fact that this Commission is critical of the actions of a number of other parties does not mean and should not be taken as meaning that the Commission condones this wrong. Whether it was the result of original intent (which the Commission does not consider to be the case), or a foreseeable risk taken heedless of the outcome does not alter the wrong or its gravity. The fact is that here the blockage did occur as a result of the actions taken by the picketers which were wrong.

13. The main thrust of this report is not however to find fault or allocate blame. The intent is to ascertain causes of the violence that occurred on 18 March 1996 and to minimize the chances of recurrence.

14. The events at Queen's Park on 18 March 1996 have roots dating back to the legislation enacted by the Rae government amending the rules of labour negotiations and practices including the introduction of a prohibition against the use of replacement workers and employees from the struck plant and the right of the Public Service of Ontario to strike. With the election of the new Harris government in June, 1995, legislative action was taken to repeal the prohibition of the use of replacement workers, striking workers, downsize the public service and introduce some restrictions on the right to strike in the public sector. This series of events both increased the likelihood of a strike and raised the stakes for the strikers.

15. The prelude to the 18th also included the two most violent events in the history of Legislative Building in September, 1995 and February, 1996 which may (and certainly should) have had some connection with the action taken by the police on the 18th of March. Representatives of the labour movement were present on only one of these occasions and there was no evidence as to their participation in the violence on that occasion. It is ironic that the duration of violence and damage to property was much worse on those two occasions than on 18 March 1996.

16. The last direct contributing event was the strike launched by OPSEU on 26 February, 1996 against the employer, the Government of Ontario involving some sixty-five thousand employees at many work sites around the province.

17. Planning by OPSEU for the exercise of the right to strike commenced in earnest in the fall of 1995 and carried into early 1996. Planning and preparation for any exercise of the right to strike by the public service was undertaken by the Executive Branch of government represented by the Management Board of Cabinet. The Speaker and the OPP on behalf of the Legislative Precinct for the most part prepared separately.

18. Strike action resulted in the establishment of picket lines at Queen's Park and around the province. The Legislative Assembly was not in session at the onset of the strike. There was a large demonstration staged at Queen's Park on 18 March 1996, the first day of the resumption of the sessions of the Legislature, by OPSEU, supported by the Ontario Federation of Labour and elements of the labour movement in the province.

19. The demonstration and mass picket on 18 March was planned by OPSEU to start at 7 a.m. and to continue to 2 p.m. The picket lines on that occasion were much more thickly populated than theretofore. The combination of the demonstration and the picket lines produced first a partial and then for a time a complete blockage of all of the entrances to the Legislative Building of the Province of Ontario where sittings of the Legislature were scheduled to open at 1:30 p.m.

20. In anticipation of a major demonstration, MPPs and essential staff had filtered into the buildings in the Legislative Precinct commencing the night before and continuing in the hours before dawn when no picket lines were in place.

21. Entrance was thereafter achieved spasmodically throughout the period from about 6:30 a.m. to 10 a.m. In this period some MPPs were escorted into the Legislative Building at various points in the Queen's Park Complex by the OPP assisted at times by Metro. More formal action to obtain access for MPPs commenced about 8:30 a.m. when the OPP employed its Crowd Management Unit (CMU) to escort some MPPs into the Frost South Building. Subsequently, additional access for MPPs and essential staff was arranged by Metro who made informal arrangements with the picket captains and marshals at the access point.

22. Later in the day (at 11:30 a.m. and 1:30 p.m.) the CMU was deployed by the OPP outside the north end of the Whitney Building and the North Frost Building. In both instances force was applied to the demonstrators by the CMU to clear a path for entry of the MPPs. A Metro public order unit ("POU") assisted in the operation at the entrance of Frost North. In these two altercations at least five persons, including one police officer, suffered injuries of varying levels of severity. No significant damage was done to any of the buildings at Queen's Park during this demonstration.

23. The Legislature did open as scheduled at 1:30 p.m. and the demonstration and picketing did terminate at 2 p.m. as planned by OPSEU. The deployment of the CMU at the Whitney and Frost Buildings resulted in violence. The crowds were resistant but not

initially aggressive. It would appear that the OPP on at least these two occasions initiated the deployment of the CMU without adequate assessment of the size and mood of the crowd, and without complete liaison and concerted action with Metro. This did not arise so much from conscious decisions on the scene of the altercations as much as the absence of any complete, precise, strategic and tactical planning in the days leading up to the 18th. An important contribution to the increasing confusion was the failure of the police forces and the Speaker to share intelligence information and plans for the 18th of March. Neither did the Speaker co-operate and co-ordinate his efforts to seek court orders or injunctions with the like efforts of the Executive Branch during the strike. Ultimately, the Speaker obtained a court injunction some hours after the demonstration had ended. A copy of the order obtained by the Speaker, and the reasons for decision of His Honour Justice Winkler can be found at Appendix F(5).

24. In the melee which followed the introduction of the CMU, there was very little evidence of retaliation by the crowd. No arrests were made. After the first foray by the CMU, OPSEU marshals made an offer to work with the police to avoid the further use of force on the demonstrators and subsequently did provide this assistance. The potential to use this offer to avoid violence was not realized due to poor planning and communication by the police forces.

25. On the 18th of March the two police forces employed or had available about three hundred police officers, approximately one hundred of whom were specially equipped for crowd control with helmets, visors, shin protectors, shields and batons and jackets fortified by kevlar. The action by the CMU of the OPP was principally the use of shields and batons to press the picketers and the crowd back to create a cordon for access by the MPPs. In all of these operations the CMU carried their batons in hand and films and tapes taken of the scene by broadcasters and police show the action of the police with shields, batons and pepper spray. Metro participated in the last CMU deployment by deploying a POU at Frost North. Metro officers left their batons fastened to their belts and confined their efforts to some use of their shields to extend one side of the cordon at Frost North.

26. There are a large number of demonstrations at Queen's Park and elsewhere in Toronto every year that occur without serious incident. The Commission has been concerned to ascertain why this particular one went so wrong and, as set out above, how the chances of a repetition of the scenes of 18 March 1996 can be minimized.

27. In summary, the Commission concludes that what occurred on that day was an unusual if not unparalleled combination of circumstances including:

- (a) the change of legislation with respect to politically charged and sensitive labour issues coupled with the largest strike in the history of the province;

- (b) an almost complete lack of meaningful communication prior to the event by those who were to be participants as demonstrators, building occupiers, persons or groups seeking access and those charged with policing the day;
- (c) almost complete miscommunication and misunderstanding between those who did attempt to communicate or plan together;
- (d) faulty and/or unwise plans for the day by all of the parties including mistaken expectations as to who the "other side" was and/or what that other side intended or would do;
- (e) an inherently unsound plan by OPSEU to funnel all persons seeking access to the Queen's Park Complex to the East Door of the Legislative Building without sufficient or indeed any regard for the potential for blockage and loss of control that could ensue;
- (f) the acceptance and pursuit of a "mission" by the OPP at the direction of the Speaker outside the normal policing of a demonstration or picket line coupled with the lack of practical experience of the OPP forces on the scene in crowd control situations as well as a lack of familiarity of those forces with the makeup of the OPSEU demonstrators they were encountering;
- (g) the lack of unified command of the police and the lack of a simple and effective means of communication between the police forces and their respective field units which led to the implementation of hastily improvised, un-reconnoitered, un-coordinated and ill-understood policing plans where Metro and the OPP did not share a common understanding of what was proposed to be done and hence could not and did not act together;
- (h) the failure of the Speaker to take sufficient steps to make clear his position on parliamentary privilege including seeking court intervention in the days preceding 18 March 1996 when there were already instances where the access of MPPs had been impeded and therefore their privileges encroached.

28. If anyone, but primarily the Speaker, the OPP and OPSEU, had simply spoken at a high level in advance, this debacle would in all likelihood not have occurred. The misunderstanding of the plans, mind-set and assumptions of the other parties on the field was almost total. In short, almost everything that could go wrong or fall between the cracks did. Although this will no doubt be cold comfort to the victims of the day, the MPPs and others who were mishandled and abused by the demonstrators and those picketers who were on the wrong end of police batons, it is fortunate that the injury list

for the day was not longer and more serious. The violent episodes actually took up a very small portion of the day and the injuries and experience though traumatic could have been a lot worse.

29. The two police forces were very candid with the Commission as to errors that were made and what with hindsight could have been done better. This approach was much appreciated by the Commission. Indeed the two police forces have already taken steps to correct some of these things, for which they are to be commended.

30. The recommendations made by this Commission are limited to the Terms of Reference and the situation at Queen's Park. The Commission recognizes the special and separate nature of the Legislature and fundamental democratic values embodied in the ancient doctrine of parliamentary privilege. The task for the Commission and for the House is the optimal method to protect those values in modern circumstances. In recognition of the joint submissions of the OPP and Metro, the Commission believes that there should be one main police force at Queen's Park and it should be Metro, who would have overall and neutral ultimate discretion and control in police matters. The Commission recommends in addition that there be a separate non-union security force for the parts of the Queen's Park Complex where access can be obtained to the Legislative Assembly and that this be a neutral force under the Solicitor General independent in a fashion akin to the OPP but with close ties with Metro on police matters and with the Speaker on matters with respect to the Legislative Chamber.

31. As may be apparent from the foregoing, the Commission recommends for the consideration of the Legislative Assembly that overall control of policing and security not be in the Speaker. The occupant of that office is unlikely to have the necessary background or training in security. The important values of access and the special nature of a parliament can be instilled in Metro and a dedicated security force through training. The Commission has made a number of ancillary recommendations to implement these main themes and hopefully to ensure that the demonstrators, police forces and users of Queen's Park will never again be so unaware of each other's intentions, plans and the special rules that must be observed with respect to access to the seat of government in the province of Ontario.

32. It should also be said by way of summary that there was absolutely no evidence before this Commission of improper interference by the Executive Branch or any MPPs in the conduct of the police forces on the day. The evidence of the OPP was absolutely clear that all policing decisions were made by them independently without direction, input or interference from any political quarter. Similarly, it must also be said that the evidence is clear that OPSEU, in its planning in the days before 18 March 1996, did not intend a complete blockade of the Legislative Assembly to keep Progressive Conservative MPPs out so that business of the House would be conducted in a way favourable to their interests. In their planning they recognized that pursuing such a course would not only

be wrong, it would have a substantially negative impact on the cause OPSEU was seeking to advance. The logistics and the management of the plan for their day were not sound but there was not the intent of insurrection.

I. INTRODUCTION

1. This is a report on the hearings conducted into the events at Queen's Park, Toronto, on 18 March 1996, as authorized and directed by Order-in-Council 612/96 issued on 17 April, 1996 by the Lieutenant Governor of Ontario. The Order-in-Council establishing this Commission of Inquiry is appended as a schedule to this report, at Appendix F(1). The structure of the hearings conducted, including a list of witnesses who appeared before the Commission, is found at Appendix F(6).

A) Authority of the Commission

2. The Terms of Reference direct the Commission to inquire into the events of 18 March 1996 and the circumstances leading up to them including:

- (a) the actions, rights and responsibilities of all participants;
- (b) the effect of those events on the operation and security of the Legislative Assembly, and on access to public buildings;
- (c) the policies and responses of the Ontario Provincial Police, the Metropolitan Toronto Police and the Ontario Government Protective Service; and
- (d) such other matters relating to these events as the Commission considers appropriate.

3. Paragraph 4 of the Order-in-Council states that "The commission shall not express any conclusions regarding the criminal or civil liability of any person or organization." The Commission is therefore not authorized to attempt to determine or assess liability of any individual in civil or criminal law. The Commission is also not authorized to assess the responsibility of any police force or officer under the *Police Services Act*, S.O. 1990, c. 10, or otherwise. This report therefore will concentrate on the lessons to be learned from this incident and the measures that should be adopted to protect the Ontario community from a repetition of the violence that erupted in the course of these events at Queen's Park. It also should be appreciated that despite the urging of some parties, the Commission is not under a directive to assess the present labour relations laws of Ontario, either as a part of a judicial system, or as administrative tribunals may determine issues such as the right to strike, replacement workers, or any other like aspect or consideration.

4. There is one other subject to be addressed here. In argument, at the very end of the hearings, the Speaker asserted that its actions and responsibilities with respect to the events of 18 March and the circumstances leading up to them could not be addressed or

commented upon in the report of the Commission. That submission was also said to be based upon the law of parliamentary privilege. No other counsel adopted this view of the jurisdiction of the Commission and it was opposed in argument by counsel for the Government of Ontario and OPSEU. In the circumstances, the Commission considers that there is no merit in this position taken by the Speaker. Accordingly, this Report is prepared in fulfilment of the Terms of Reference, without giving any weight or effect to this submission. Detailed reasons as to why this conclusion has been reached in the circumstances here existing may be found at Appendix A.

B) Background

5. These events concern the conduct of a picket line established by the trade union, the Ontario Public Service Employees Union ("OPSEU"), and related demonstrations in the course of a strike called by OPSEU, the certified bargaining agent of about 65,000 employees of the Government of Ontario, situated in government facilities at Queen's Park and throughout the province. OPSEU established picket lines at approximately 10,000 locations in Ontario, including the Parliament Building at Queen's Park (the "Legislative Building"). As part of the plan of strike and protest, OPSEU, with the assistance of the Ontario Federation of Labour ("OFL") and others organized a mass demonstration at Queen's Park to coincide with the re-opening of the Legislature on 18 March 1996. Unfortunately, during the course of the day, several episodes of violence occurred, lasting in total approximately 15-20 minutes.

6. The evening news of 18 March 1996 transmitted only brief images of a confrontation between fearsomely garbed police and apparently unarmed demonstrators. This alarming coverage raised at least four very serious questions. Depending on one's political outlook, the questions can be framed with more or less inflammatory language to add heat, if not light. The thrust of the questions is nonetheless the same.

Question 1:

Did the "government", that is the Executive Branch of government, have a hand in directing the police force to do what it did as a means of making a point or squelching opposition to its policies?

Question 2:

Were the demonstrators seriously bent on preventing the elected representatives of the people of Ontario from performing the tasks for which they were elected in the sense of keeping the majority party out of the Legislative Assembly to prevent the implementation of policies that the demonstrators opposed?

If the answer to both of the first two questions is "No," then,

Question 3:

How and why did this type of confrontation happen in Ontario?

Lastly (since it is assumed that all reasonable persons would agree on this goal):

Question 4:

What steps can be taken to maximize the chances that it does not happen again, while preserving the important values of freedom of expression and of assembly, the right to engage in a lawful strike and the inviolability of the meeting place of our elected representatives?

7. A positive answer to either of the first two questions would, in the view of the Commission, rightly be exceptionally troubling to most Ontarians. The political neutrality and independence of the police from the government of the day in the execution of their duties is perhaps unknowingly assumed, but it is fundamental to the individual freedoms cherished by the people of Ontario. A short synopsis of the role and status of the police officer in the course of the execution and performance of his or her duties and responsibilities is set out at Appendix E(2), but a fundamental principle is that the police are not directed nor should they accept direction for political ends. It would be very grave indeed if a government was found to have crossed over that line and the police had accepted the intrusion. Similarly, if the labour movement, an important and respected participant in the various groups that make up the fabric of Ontario, as represented in this instance by OPSEU, intended to go beyond expression of dissent and in that process keep elected representatives from the Legislature, this would be nothing short of insurrection, an even graver condition.

8. The Commission was mindful of the need to search out any evidence or leads that might tend to suggest that there was the possibility of there being anything to pursue or report in either of these areas. It is important to state at the outset that the very extensive record of evidence and documents generated in the hearings produced not a shred of evidence to suggest either improper interference by the government in the policing function, or the labour movement's intent to usurp the legislative function by keeping the majority party out of the Legislature while business was to be transacted, in order to counter the policies and platform on which the party was elected. As will be seen, the reasons why the events of 18 March unfolded as they did lie in the far less sinister bailiwick of human error, inexperience, and bad luck. The answer to both of the first two questions framed above, therefore, is a firm and unequivocal "No." The balance of this report is taken up with answering the last two questions in the context of the Terms of Reference.

9. For ease of reference, the Commission has treated the participants, as referred to in the Order-in-Council and as they appeared before the Inquiry, as follows:

- (a) the Speaker of the Legislative Assembly, including the members and employees of the Office of the Assembly (the "Speaker" or the "Speaker's Office");
- (b) the Ontario Provincial Police ("OPP") and the Ontario Government Protective Service ("OGPS");
- (c) the Metropolitan Toronto Police Force ("Metro")
- (d) OPSEU, including, more specifically, members of the Ontario Public Service ("OPS") bargaining unit along with members of the OFL;
- (e) Members of Provincial Parliament ("MPPs") who, save for the Speaker and one Member sitting as an Independent, sit as members of one of the three party caucuses:
 - (i) the Progressive Conservative Party ("PC")
 - (ii) the Liberal Party ("Liberal")
 - (iii) the New Democratic Party ("NDP");
- (f) Her Majesty the Queen in Right of Ontario (the "Government of Ontario"), represented in part by the Secretariat of the Management Board of Cabinet (the "Management Board Secretariat", or "MBS")

10. In addressing its mandate, the Commission received the assistance of each of these participants, in all cases in the form of evidence, and in most cases through representation by counsel throughout the course of the public hearings held by the Commission. It is only this assistance and co-operation that made it possible to report in anything approaching the tight time limit of the Order-in-Council. The totality of that evidence reveals both a straightforward story and more complicated underlying explanations for why events occurred in the manner in which they did. In reporting, the Commission has decided also to adopt a parallel dual format. The first part of this duality is a relatively short narrative, describing in summary form the facts found, conclusions reached, and recommendations made by the Commission. The second part, which is presented in the form of appendices, is the detailed backup and will be of interest to the users of this report and those who want to take the time to go behind the first part. The Commission has also set out a Glossary of terms and acronyms which can be found at Appendix F(3). Finally, throughout the report the Commission has not provided footnote references to the transcripts or exhibits: the Commission believes that support for all its conclusions are found in that record.

II. GENERAL OVERVIEW OF EVENTS

A) Security at the Legislative Assembly

11. Whatever may be the view of the political scientists and the constitutional lawyers, Queen's Park is seen by the citizenry of the province as being the seat of government. Queen's Park, as a symbol of government, is viewed as the appropriate place to deliver a message to those with political power, namely the MPPs and most especially the "government", the party with the majority or plurality of seats in the Legislature.

12. There is a long standing practice in Ontario, which might almost be described as a tradition, of demonstrating at Queen's Park. At least until now, it is safe to assume that hardly anybody at such a demonstration either knew or gave much thought to the subtle distinctions between the legislative and the Executive Branches of government or the function of either. The separation of executive and legislature is a bedrock principle of democracy, but the struggle to establish it occurred centuries ago in another country. It has not been seen to be in jeopardy in Ontario, certainly not in living memory, nor likely ever. One of the attributes of that separation has in the last 20 years been that the security of the Legislative Precinct (the Legislative Building, part of the grounds around it, and, in the last five to six years, part of the Whitney Block, as shown on the map found in Appendix F(4)) is under the aegis of the Speaker, the historical representative of the Legislative Assembly. As mentioned, it is unlikely that most, if any, of the numerous demonstrators or the general public who attend at Queen's Park every year, know or care that they are encountering security and police forces different from or in addition to those they would encounter literally across the street. In most cases, this blissful ignorance does not matter.

13. Under the parliamentary form of government, the Legislative Branch consists of the elected Members sitting in the Legislature. MPPs are elected by the voters of the province pursuant to the Constitution of Canada. The Speaker presides as chair of the sessions of the Legislature, exercising control over the debates and discussions so that the legislators may progress through their public duties in an orderly and efficient fashion. In doing so, the Speaker is guided by rules adopted over the years by the House for the regulation of its processes.

14. When Ontarians think of the job of the Speaker at all, it is, in all likelihood, with respect to this well-known role of presiding over the debates and proceedings in the Legislative Chamber. The Speaker currently also has responsibility for the administration and security of the Legislative Building. In short, the Speaker runs the forum for the legislative function and has all the janitorial, administrative, staffing, and other powers to fulfil that task. The Speaker has a separate staff, independent of the Government of Ontario, of approximately 388 employees, who are not members of a union, and are not

part of the Public Service of Ontario. The permanent second-in-command to the Speaker is the Clerk of the Legislature. The Sergeant-at-Arms is in charge of security in the Legislative Precinct. While one normally associates these officials with the ceremonial and adjudicative roles they perform in the Chamber, they collectively were and are at all times in charge of security as well. None of the persons who hold these positions at present or, for that matter, in the past have had any formal security training. A more detailed description of the structure and role of the Speaker's Office is to be found at Appendix D(1).

15. There is also a body of rights and privileges encompassed by the term "parliamentary privilege." These privileges were largely developed in the United Kingdom to prevent encroachments by the courts, the monarchy in older times, and today the Executive Branch of government upon the independence and function of the Legislature. They are also part of the constitutional law of Canada, although for the most part, the battles that led to their development have not been fought here. The basic principle is that Canadian legislative bodies possess such inherent privileges as may be necessary to their proper functioning. For a more detailed discussion of the law of parliamentary privilege and its status in Canada, see Appendix E(1). One of these parliamentary privileges is the right of MPPs to have unrestricted access to the Legislative Building. No-one in the course of the Inquiry hearings challenged the right of the MPP to access to the Legislature. The Speaker considers that his office is the guardian of these privileges and is entrusted with enforcing them. The Speaker has proceeded on the basis that he could not negotiate or allow any diminution of any of those privileges without an express resolution of the Legislative Assembly.

16. The Commission considers it important to stress that in its view these privileges or rights do not "belong" to the Speaker or any one MPP or person so much as they are held on behalf of the citizens of Ontario. The person of the MPP who is their representative is protected through these privileges to safeguard their collective democratic rights. Trifling with or interfering with access can be seen as proffering an insult to the people of Ontario and an assault on these collective democratic rights. It is for this reason that the Commission believes that special considerations apply to issues of access by MPPs to the Legislative Precinct and not by reason of some arcane and ancient developed authority. The super-structure built on top of these privileges, stemming from a by-gone age, may not be necessary to protect the important underlying values but these values need to be forcefully restated and protected nonetheless. In the passages that follow next and in the Recommendations made by this Commission an important goal is to do just that and to recommend a system where no one will stray into offering this insult by accident, mistake or bad luck as was the case in this instance or could be heard to offer this as an excuse afterwards if access was interfered with.

17. The security for the Queen's Park Complex (the Legislative Precinct and the numerous other buildings situate in the area) has hitherto been provided by a patchwork

quilt of separate police and security forces dealing with and, in the case of the Legislative Assembly, taking instructions from separate building owners or occupiers. Although the police forces attempted to co-ordinate their activities, the Speaker, in what can only be seen as a misguided effort to assert and maintain independence from the Executive Branch, did not co-ordinate his plans for security the Legislative Precinct with the other major occupiers of the Queen's Park Complex, the Executive Branch of the Government of Ontario. In fact, when an offer to co-ordinate their information and efforts was made by the department of the Government of Ontario responsible for such matters, the MBS, in the days leading up to 18 March, it was refused by the Speaker. The Ministries that make up the Executive Branch are each headed by a Minister, an elected MPP who also of course is entitled to participate in the Legislature. The Executive and the Legislative Branches thus share the Queen's Park Complex and, on normal days, access to any of the buildings by MPPs and staff may be obtained by tunnels once access to the Queen's Park Complex has been gained through any of the numerous public entrances to the complex. This efficient and intricate sub-terranean inter-connection makes drawing rigid lines of jurisdiction somewhat difficult.

18. Up until 1995, the inefficiency of the present security system, and the fact that the occupants of the Speaker's office and his employees had no police training, had not been exposed to public scrutiny or brought home by tragic events such as had occurred in other jurisdictions. Groups, sometimes quite noisy and large but generally peaceful, demonstrate on a very frequent basis at Queen's Park. Perhaps this lengthy and mostly peaceful history contributed to a tolerance of what was known to be at least an inefficient system and latterly shown to be risky as well.

19. It must be stressed from the outset that the term "security" in relation to Queen's Park is used as a catch-all phrase to describe the general safety of the buildings and their occupants. Included within this term, however, are the distinct tasks of general daily security (ensuring the safe and orderly conduct of business in the building) and policing. In the days and months leading up to and including 18 March, both general security and policing services were provided to the Speaker by the OPP and OGPS pursuant to a contract that had first been formalized in writing in 1992, in the form of a Memorandum of Understanding ("MOU") between the Speaker and the Solicitor General representing Her Majesty the Queen in Right of Ontario. Pursuant to the contract, the Solicitor General provides a detachment of six OPP personnel (added in 1984 as a result of violent events in other jurisdictions) in the Legislative Precinct and employs a larger detachment of fifty OGPS personnel who are not police officers but rather "special constables" under the *Police Services Act*. The OGPS is unionized and its members are members of OPSEU. The members of the OGPS look after most of the general daily security in the Legislative Precinct, while the OPP detachment plays the dual role of managing the OGPS, and providing the policing side of security within the Legislative Precinct. Collectively, the

fifty OGPS and six OPP officers in the Legislative Precinct are referred to as the Legislative Security Service or LSS.

20. On security issues, the OPP detachment at the Legislative Precinct had two masters. They reported up the normal OPP chain of command on the one hand, but reported through the Sergeant-at-Arms to the Speaker on the other. Because of this peculiar split and the MOU, the OPP were willing to take direction and authorization from the Speaker that they would not take or seek from a normal building owner, even, and perhaps especially, where that building owner was the Government of Ontario. The end result, and one of the causes of the events of 18 March 1996, was that a police detachment, at least to some degree, sought the approval of and was under the direction of a civilian with no police or security training.

21. Outside the MOU, the OPP is also responsible for security inside the other buildings in the Queen's Park Complex situated outside the Legislative Precinct, which responsibility includes Osgoode Hall. This is carried out under the name "Area Command", under the supervision of a separate OPP officer and a different OGPS detachment of up to 109 special constables. This OPP officer is not responsible to the Speaker, but only to his superiors within the OPP. Further, the OPP is also responsible for providing personal security to the Lieutenant-Governor, Premier, Cabinet Ministers, and other MPPs who request and need security services. It was submitted by OPSEU that this structure led in law and in fact to a conflict and a loss of neutrality by the OPP. The arguments are addressed in part in Appendix D(2). The Commission wishes to state that whatever arguments may be made about the structure, there was no indication in the evidence that the OPP acted improperly in the sense of accepting direction from the employer - the Government of Ontario - or to favour the employer at the expense of neutrality. It may be argued that the OPP's understanding of its mission from the Speaker was incorrect or ought not to have been accepted. It cannot credibly be argued in the view of the Commission that the OPP were not sincere in their evidence that the persons involved were attempting to be neutral as between employer and employee.

22. This OPP/OGPS structure is separate from and in addition to the police force with general police responsibility in the Queen's Park area: the Metropolitan Toronto Police Force, the largest police force in the province. Since the Queen's Park Complex falls within the territory of Metro's 52 Division, that division has general policing duties at Queen's Park, as it does in relation to any building or public open space in its region. 52 Division deals with over three hundred demonstrations of various sizes at various locations each year, including those at Queen's Park. With this number taking place in 52 Division alone, Metro is certainly the most experienced police force in Canada in assessing and dealing with large crowds.

23. Metro responds when needed to incidents or crowd situations at Queen's Park, including those on the South Lawn of Queen's Park, which falls within the Legislative Precinct. Despite this fact, and despite the presence of the OPP in the area, there was no formal Memorandum of Understanding or similar document in place between Metro and either the OPP or the Speaker to regularize the arrangements between the forces with respect to Queen's Park or to define what services Metro would provide, how they would be provided, and who would have ultimate control. In practice, there also appears to have been a blurring of the distinction between policing and general security services. Although Metro obviously played, and still plays, a key role in the provision of policing services, there were no established relationships or lines of communication between the Speaker's Office and Metro. Rather, any contact took place between Metro and the OPP, either through the LSS or through Area Command.

24. While no written contract or understanding was in place between the Speaker's Office or the OPP and Metro, the general division of responsibility for policing at Queen's Park as between the OPP and Metro had always been, as a matter of practice, that Metro dealt with events outside the buildings in the Queen's Park Complex, and the OPP handled the inside of those buildings. For reasons that will be discussed, this division or distinction was not uniformly observed on 18 March and in any case was in practice unworkable. A more detailed description of the respective roles and responsibilities of the OPP and Metro is contained in Appendices D(2) and (3).

25. Although both the OPP, through the LSS, and Metro had experience with demonstrations at Queen's Park, they had not developed any formal routine for joint planning or for the sharing of information. Nor did their forces operate under a unified command, use one central command post, or share a communication system. They were two separate professional forces who co-operated through the common sense of their leaders. As is now obvious, the formal and more extensive co-operation which would have been vital to success in dealing with the increasing size and volatility of the demonstrations that occurred at Queen's Park was lacking.

26. There was also no communication or contact between the House Leaders (as representatives of the present three main parties) and either the LSS or Metro, so that information concerning security issues could be disseminated to MPPs, and MPPs concerns about security issues could be raised with those providing the security. Such communication as there was in this area on this subject was with the Speaker, typically through the Sergeant-at-Arms. As should be obvious, there were a number of links and kinks, if not gaps, in the reporting chain of communication that created ample opportunity for miscommunication or failure to communicate. Communications were often not timely and this proved fatal to the execution of some of the police plans on 18 March.

27. In the policing of a picket line, neither the OPP nor Metro would normally be prepared to use force to open a path through a resistant line, except to prevent violence

and injury to persons or property. Both services would only use force in an emergency situation, and definitely would not use force on the authorization or at the direction of the building owner whose premises were being blocked. The OPP, however, viewed the Legislative Building as a special case. The OPP considered that their directives from the Speaker to bring the MPPs into the Legislature were different from general instructions relating to a picket line. Indeed, there was no linkage in the Speaker's mind between the strike and the MPPs performing their legislative functions. In their role as contract provider of security to the Speaker, the OPP prepared for his approval a plan that contemplated the use of force, if necessary, to obtain access for MPPs and essential staff. This difference in approach to the general rule for picket lines appeared to recognize the supervening importance of assuring access to the Legislature by the MPPs. As will be seen, Metro was not proceeding on the same basis as the OPP in this regard and thought that the normal rules of policing picket lines applied.

28. The important point for these purposes is that the MPPs, as a whole, had never considered the issue of whether and in what circumstances they wanted to have the police use force to arrange access to the Legislative Assembly. Nor did the Speaker have a clear and consistent rule as to the unimpeded access of the MPPs. At times during the strike, the Speaker tolerated an imposed delay at the entrances of the buildings. A plan to use force was developed by the OPP and approved by the Speaker, to protect the parliamentary privileges of the MPPs, without any consultation with the House Leaders of the three political parties or a resolution of the Legislative Assembly. The Speaker evidently considered that he had the authority to approve whatever level of force was found by the OPP to be necessary in order to enforce the right of access that is one of the parliamentary privileges guarded by the Speaker. This is a dubious, if not completely wrong proposition, but it was the basis on which both the Speaker and the OPP were acting. While the right of access by MPPs is part of the law of parliamentary privilege, the method of exercise raises other equally important considerations as to the federal limits on the use of force by police. Fairness to the Speaker requires that the uneven treatment of interference with MPP access be considered against the background that prior to the House being in session, the need for immediate access for the MPPs to the Legislature was perhaps considered less urgent.

29. In summary, the structure for security and policing that existed in early 1996 for the Legislative Assembly almost guaranteed that it would be headed by an individual untrained in security matters, supported by a staff equally unfamiliar in this area. This is not intended as a criticism of any individual, but rather as a recognition of historical fact and structural difficulty. The ultimate head of that security, the Speaker, as client was viewed, both by himself and by his contracted police force, as possessing powers to authorize or instruct a police force to do things that no other building owner or manager in the province had. The contracted police force was a geographically imported police force, responsible in practice for only a part of the Legislative Precinct (inside the buildings), and the Speaker had no direct link with the force that policed the balance of the

area. The basis for the extraordinary power of the Speaker to instruct or approve a use of force that may not otherwise have been used was a theoretical privilege, not recently debated or considered by the ultimate holders of the privilege, not widely known, and never used in living memory as the justification for the invocation of the police power against a citizen. Indeed, it involved issues under the Canadian Constitution. With this as the legal background, it is easy to see how confusion descended into chaos and how violence arose out of lack of a cohesive plan, incomplete co-ordination of police action and a major loss of control by the picketing Union.

30. There certainly is, and should be, a pervasive feeling that the Legislative Assembly is somehow different and should be treated differently. All witnesses, including members of OPSEU, readily admitted this reality. As will be seen in the Recommendations, the Commission does not quarrel with the notion that a parliament is or should be seen as a special case. In trying to understand why the events of 18 March unfolded as they did, the point of this review is that the security structure that existed was an unwieldy one, effectively, though wrongly seen as reposing police power in a non-police person largely by historical accident. The Speaker has argued through the course of this Inquiry that this power not only exists, but also is appropriate due to the special nature of policing a parliament. There is some force to this submission where the traditions and workings of a parliament are in issue, but it is misconceived to the extent that it is advanced as a justification for a system that, in effect, carves out a fiefdom where ultimate control of the police forces, including the use of force by the police against Ontarians, is provided to an individual not qualified to have that discretion and separate and arguably apart from the normal restraints on the use of force by police. The composition of limits on the use of force is in any case a federal power. In February of 1996, Metro and the Speaker were discussing a draft agreement that contemplated the replacement of the OPP by Metro. It is instructive that Metro had included a term in its draft that the ultimate discretion in policing matters would be in Metro. The OPP had a different view of the authority of the Speaker and its mission which played an important part in the events of February and March 1996.

B) The Lessons of Late 1995 and Early 1996

31. The experience of largely peaceful crowds at Queen's Park demonstrations began to change in September 1995. On the day of the inaugural Throne Speech of the new government, 27 September, 1995, there was a violent demonstration at the south doors of the Legislative Assembly. There were a large number of groups present that day and part of the crowd turned very nasty. Overturning the temporary barricades installed some distance from the main doors, they attempted to gain access to the Legislative Building by force and by sheer weight of numbers. They were met on the steps by regular members of Metro's 52 Division who were forced back up against the building. The doors were eventually shut behind the embattled Metro police and a violent melee took place that lasted, by one account, over an hour and no breach of the building took place. Due to the

unexpected nature of the violence, neither police force fielded a specialized crowd control unit to handle the aggressive mob that attempted to enter the Legislative Building on that day. This incident resulted in the formation of a Standing Committee of the Legislative Assembly to look into security and led to discussions between the two police forces, supposedly to clarify their mutual understanding as to their respective roles and responsibilities. There were no arrests made relating to this event.

32. While the Committee was deliberating, a further and even more violent event occurred on 7 February 1996. On that day, a group of student demonstrators actually smashed the historic south doors of the Legislative Assembly and damaged and defaced the front foyer, where they staged a sit-down "protest" for about one hour. Their advance was checked by members of the LSS, assisted by the Metro force. Once again, the police forces did not have on site their specially-trained CMUs or POUs. As a result of this event, a total of four arrests were made.

33. These two episodes were by far the worst in the history of the Legislative Assembly. Whatever other conclusions might be drawn, it was, or should have been, manifestly clear that it was unsafe, in planning for security for future events, to rely on the self-restraint of the demonstrators or on general respect for the institution represented by the building. That this was an unfortunate development cannot be gainsaid, but it would have been irresponsible not to consider it in planning for the future. It would also not be consistent with human nature if those charged with policing and security did not have these events in the back of their minds when a large crowd was about to appear on their doorstep. What is surprising and unfortunate is that there were no major changes of any type implemented after these two rather frightening events. The planning for and policing of the next major event at the Queen's Park Complex was undertaken by the same divided and inefficient structure that had existed up to that point.

34. This Inquiry likewise takes account of the rising tide of violence at the doorstep of governments around this world in the past decade. There are lessons to be drawn from the experience in the Quebec Legislature, and more recently, during the conduct of this Inquiry, the extreme violence occasioned in and around the Australian federal parliament. History and experience seem to be illustrative of the increasingly frequent occasions on which segments of the population, organized into mobs of varying sizes, decide, with or without planning, to break the law to illegally 'send a message' and to improperly affect the properly elected representatives of the people. The mob for a time takes the law into its own hands. This Commission does not consider that this was the intent of at least OPSEU in this case but undoubtedly there were smaller groups who were planning and acting in this manner on 18 March 1996. Dealing with the effect of a small group of "troublemakers" inside a larger group of demonstrators who originally had a law-abiding mission is a subject that is addressed in the Recommendations. The community was shocked by the clash between the police and citizens. The evidence is laced with the irony

that the altercations here need never have happened but for poor communications, mistaken concepts of rights and obligations, and simple bad luck in the timing of events.

C) OPSEU: Labour Relations, the Strike and the Legislative Assembly

35. At the start of the strike, OPSEU represented approximately 100,000 employees in total including some 65,000 public sector workers. Although OPSEU itself has strike experience by reason of the balance of its membership, the strike in 1996 was the first for the public sector workers who had only obtained the right to strike through Bill 117, An Act to Revise the Crown Employees Collective Bargaining Act in December of 1993. From that point forward a strike was possible. In order to be in a position to strike, OPSEU had to conclude an agreement on the provision of "essential services" as defined in its governing statutes. The provision of at least some services by the employees of the OGPS were considered to be essential. This agreement was reached in the summer of 1995. A strike became more probable with the change in majority party in June of 1995 and the enactment of Bill 7, in an Act entitled "To Restore Balance and Stability to Labour Relations and to Promote Economic Prosperity and to Make Consequential Changes to Statutes Concerning Labour Relations" which came into force in November of 1995.

36. The new legislation had a significant impact on OPSEU. It changed the situation with respect to privatization so that OPSEU would not automatically represent employees of newly privatized operations. There were also limits and restrictions on pensions and the removal of the ban on allowing employees of a struck employer and replacement workers to work during a strike. In addition, the Government of Ontario had indicated an intention to downsize the public service by in excess of 10,000 jobs. In the run-up to the strike OPSEU had experienced, to its obvious chagrin, one of the realities of the public service: the employer has access to the legislative machinery and can change the ground rules for labour disputes through legislation. By the basic tenets of a parliamentary democracy, the majority party, after its election in June, 1995, formed the new Government. A new bargaining adversary was in control of the Legislature. On a practical basis therefore, it is eminently understandable and reinforced by a tradition of demonstration, that OPSEU would view the Legislative Assembly and the Queen's Park Complex as an extremely important place to picket. Only at the Legislative Assembly do the MPPs, including the Cabinet, meet to discharge their mandate to govern. The separation of executive and Legislative Branches is by definition never complete and in Ontario they are actually physically interwoven in the buildings they occupy. In the days and months before the OPSEU strike from the subjective point of view of the OPSEU members their employer, the Government of Ontario may well have been seen to be "using" the Legislature to strip away hard-won and recently conferred statutory advantages and rights. The rejoinder of course is that the people of Ontario elected the PCs to pursue this course amongst others.

37. It appears that OPSEU began planning for the strike in earnest in late 1995. The structure of OPSEU is divided into 7 geographic regions. Region 5 is the Greater Toronto Region. There are some 18,000 OPSEU workers in Region 5 including approximately 2,600 in the Queen's Park Complex.

38. Region 5 appointed a task force to begin strike mobilization earlier than other OPSEU regions due to the numbers involved and the need to strengthen this particular region. OPSEU staff spent the months of November, December and January "meeting with locals, preparing locals, talking to them about strikes, bargaining procedures and so on". OPSEU was planning on a basis that led to some 10,000 picket locations across the province including 400 different sites in Toronto. OPSEU prepared strike manuals and picket strategy guidelines that received wide distribution to the membership. These documents expressly told the OPSEU members that they had the right to picket the Queen's Park Legislative Building.

39. OPSEU met with Metro before the strike, exchanged views and obtained a copy of Metro's pamphlet on Strikes and Lock-outs. Both before and during the strike OPSEU became familiar with the Metro approach to policing picket lines. There were no such meetings or discussions with either the OPP or the Speaker.

40. The Government of Ontario had, through the MBS as co-ordinator, been planning for an OPSEU strike since the enactment of the legislation granting the right to strike. These efforts intensified after the change of government and the MBS established a Corporate Strike Response Centre. The MBS prepared detailed, indeed exhaustive material as to its policies and practices and how it expected its managers to act in the event of a strike. The MBS plan did not involve asking the police to use force to attempt to ensure access to government buildings but rather the request for police assistance and presumed inability of police to obtain access was a planned step on the checklist to get an injunction. The MBS was planning on the basis that OPSEU would get hold of the MBS manuals and that OPSEU knew what the MBS would do in reaction to an unruly or illegal picket line. As the MBS had responsibility for approximately 5,000 buildings throughout the province this elaborate and sophisticated system was necessary. The MBS also set up a central nerve centre for collecting, digesting and disseminating information throughout the strike. MBS offered to bring the Speaker into this loop. The offer was refused. As a consequence the Speaker, when the time approached when court orders may be required, was unable to co-ordinate with the process in use by the Executive Branch.

41. OPSEU and the Government were each hastily making extensive and, of necessity, incredibly detailed logistical, tactical and grass-roots preparations. They both knew or thought they knew the ground rules of the other side as well as those of the neutral observers or arbiters - the police and the courts. Unfortunately, it appears that the Speaker and, to a lesser extent to OPP as it related to the Legislative Precinct, were not part of this

preparation, but were instead preparing on a separate and distinct basis on their own and without regard to the "rules of engagement" that OPSEU and the MBS were planning to and did operate under. As will be seen, the Speaker and the OPP were generating their own plan which they did not share with OPSEU. Nor, despite meetings between the OPP and Metro, was knowledge of the difference between the normal policy of a picket line and the need and intention to use force if necessary to ensure that the MPPs and staff would get into the Legislature effectively brought home to Metro. Conversely, the OPP did not seem to be aware of the established sequence of actions which lead to the practice of seeking injunctive relief. The OPP and Speaker on one side and OPSEU on the other did not know their opposite number. They had no experience of each other's strengths, weaknesses, plans or problems. They each did not know something as simple as who to call to get things done. Further, OPSEU may not even have known that it should communicate with anyone other than Metro as it would on a normal strike day. This information and communications gap contributed in large part to disorganization of the day on 18 March 1996.

42. The Commission was invited by counsel for the Government of Ontario in his submissions and others on the one hand to "forcefully re-affirm that it is illegal, even in the context of a labour dispute, to deny or delay access to or egress from buildings whether they be privately owned, government owned or the Legislative Assembly. Before any other recommendations can be effective, the law must be recognized and obeyed". Counsel for OPSEU submitted, on the other hand, that "any recommendations must take into account the importance of freedom of association and the corresponding right to unionize, the crucial role of strikes and picketing in the collective bargaining process, and the fundamental nature of both freedom of expression and freedom of assembly in the form of demonstrations. The extent to which these hard won rights are allowed to flourish is a measure of democracy itself, and the clubbing of picketers in a labour dispute cannot be tolerated without a corresponding erosion in the very essence of a democratic society."

43. It is tempting to enter into this general debate but despite these exhortations, this Commission has not been tasked with, nor is it able to undertake, an exhaustive review of the law of labour relations outside Queen's Park. Further, it must be remembered as will be seen that what happened on 18 March 1996 was not the product of enlightened discussion or, a planned and principled battle of forces of employer versus employee, bearing into battle the banners of the rule of law on one side and the rights of the individual on the other but rather a confused and unnecessary clash brought about by human error and inexperience.

44. In the context of considering OPSEU's position leading up to 18 March 1996, it is important only to note that in planning for the strike, OPSEU appears to have been treating the Legislative Assembly almost identically to buildings occupied by the employer, Executive Branch of the Government of Ontario. This was an incorrect assumption in

law. In its planning and approach OPSEU was unprepared for a different occupier, and police action not directed at the labour issues of the right to strike or picket. The police plan was based instead on a clear third party right: the distinct right of access to the Legislative Building by elected MPPs. The third party, as represented by the Speaker, was at first content to let access be delayed and this was part of the stage set for 18 March 1996.

D) Planning, Communication and the Events Leading to 18 March 1996

45. Any attempt to set forth the planning and communications prior to 18 March 1996 in a linear chronological narrative form is frustrated by the simple fact that, for the most part, the parties did not plan or communicate amongst themselves on any cogent or logical basis. It is not a question of simply drawing together all the contacts to tell a story as, with a couple of exceptions, each party was an island unto itself and did not co-ordinate its efforts with the others. This is a major reason that the events of 18 March 1996 unfolded so chaotically. The other major reason in the view of the Commission is that with respect to the parties that did at least talk and attempt to co-ordinate there was misunderstanding and miscommunication of almost incredible proportion amounting to a breakdown in planning so that afterward, it is clear that the parties were not even in the same book, let alone on the same page. For these reasons this section may well appear choppy or disjointed and in so appearing accurately reflects the state of affairs in the days leading up to 18 March 1996. The root cause was inadequate planning by all parties. Each party kept some piecemeal minutes or records which illustrate the failure to reach a clear common plan.

46. The sequence of events is best reflected in the chronology which is Appendix B, and in the descriptions of the roles and actions of each major actor in Appendix D, and it is not proposed to reproduce these by way of overview. Planning for the strike was occurring in January and February, 1996. The Legislative Assembly adjourned on 29 January, 1996 until 18 March 1996. The last days of the session were somewhat tumultuous with a sit-in protest by an MPP and the passage of Bill 26, the Omnibus Bill. On 18 February, 1996, OPSEU rejected the offer of the Government of Ontario. The strike date was set for 12:01 a.m. 26 February, 1996. Not all OPSEU locals went out immediately but were phased in over the first week of the strike.

47. As is usual in a strike, the overall militancy increased as the strike progressed. OPSEU and the MBS co-operated through their lawyers at least to the extent that a system was put in place to centralize the hearing of most disputes in Toronto before one of three judges that had been made available to hear matters related to the strike. The system was used early and often. By the end of the third week of the strike there had been at least 35 applications to court or to the labour board. While there were negotiations on-going with the assistance of a mediator, both sides kept up the public rhetoric and played their respective bargaining and picket roles to the hilt.

48. In the first three weeks OPSEU and the MBS were engaged on all fronts. There were, among a great many others, prison problems and pickets of ambulance services and at the OPP facility in Downsview. The labour battle was being fought pursuant to the original extensive plans and preparations and in accordance with, on the edge of or sometimes probably over the edge of labour law in the province. Insofar as there is normal behaviour during a strike, apart from the number of strikers and sites through the province, there was normal or, perhaps more correctly, expected strike behaviour.

49. Under the MOU, between the Speaker and the Solicitor General, where it is determined that a special event may require a greater level of security than normal, the OPP is required to prepare a security plan for submission to, and in practice, the approval of the Speaker. The Speaker is seen by the OPP, in effect, as its client. It was obvious that the impending OPSEU strike was one such special event and the OPP began the preparation of such a security plan in early February, 1996.

50. The working assumption of this draft plan was that "It is expected that during a major Queen's Park demonstration, participants will try and prevent everyone, including members of parliament, from entering the building." There was no hard intelligence to support this assumption at that time but the OPP officers who generated the planning document considered it a distinct possibility from early February onwards.

51. The OPP set forth their plans to meet this contingency in the document (called the SMEAC plan). Their plans included the use of their CMU units and the use of as much force as was necessary to ensure that MPPs and essential staff obtained entry to the Legislative Assembly. The experience of 7 February, 1996 (the student invasion of the Legislative Building) is expressly referred to in the plan.

52. It is possible to downplay both the assumption and the plans as being contingencies however, in the view of the Commission, unless there was reason to believe that communication with OPSEU would exacerbate the situation or was undesirable for some other sound reason then it would be incumbent on the OPP or the Speaker to have direct contact with OPSEU to confirm or remove the assumption. If it were removed then the plan should have been to work with OPSEU to ensure peaceful demonstrations. There was no evidence that communication with OPSEU would cause OPSEU to escalate the violence and indeed based on the knowledge of the make-up of OPSEU, this could not credibly be suggested. The OPP has acknowledged with hindsight that this could have been an important communications link and has set up procedures with the OFL to ensure that it occurs in the future. This type of communication did not happen in this case and it should have.

53. One of the first instances of miscommunication that were to plague the planning occurred on 13 February, 1996. The OPP and Metro met. All three OPP witnesses who

were at the meeting testified that the SMEAC document to ensure access of MPPs to the Legislature Building during the strike was passed out at the meeting and discussed with a copy being left with the lead Metro officer to take away. The two Metro witnesses on the other hand do not recall a document being handed out or discussed, do not recall reviewing a document in the SMEAC format and the lead Metro officer does not recall taking a document away. The two forces were at a mirror image meeting. It is not proposed to multiply examples of this type of miscommunication between the OPP and Metro. One more important incident will be addressed subsequently. To say that the co-ordination and communication in planning between Metro and the OPP was imperfect is to understate the case. Both forces candidly acknowledged this in evidence. The OPP thought Metro was onside for the SMEAC plan and Metro thought it was to apply its normal policy of policing a picket line. This gap existed for more than one month up to and including 18 March 1996.

54. One important point also needs to be made. As between Metro and the OPP there was no clear assignment of the task of communicating with OPSEU. The OPP assumed that as Metro had the ties with OPSEU it was talking to them. Metro did not see it as its job to communicate the OPP's plan to OPSEU. The unsatisfactory result is that the critical task of discussing with OPSEU the plans for the strike insofar as it related to the Legislative Assembly and the specific and unique characteristics of that building, fell between the cracks.

55. As discussed previously, Metro was in discussions in mid-February with both OPSEU and the MBS about the looming strike. Metro communicated its normal neutral and non-intrusive picket-line policing policy to both sides. No caveat or carve-out was reserved with respect to the Legislative Assembly in these communications nor was the separate status of the Legislature ever raised.

56. As required by the MOU, on or about 21 February, 1996 the OPP submitted the SMEAC plan to the Speaker. There was a meeting with the OPP and the Speaker, the Clerk, the Sergeant-at-Arms and others from the Speaker's Office to discuss the SMEAC document and at the end of the meeting the Sergeant-at-Arms approved the plan on behalf of the Speaker. The Speaker has submitted that this approval was not a direction or authorization in any way. It is open to question whether the Speaker viewed it as such. What appears clear is that the OPP did not consider that its normal policing policies applied. Inspector Hope, the Incident Commander of the OPP, testified that the labour dispute guidelines issued by the Solicitor-General which would apply to all OPP activity elsewhere did not apply to the Legislative Security Services by reason of the contract with the Speaker. Inspector Hope went on to testify that under that contract the OPP were given the direction by the Speaker to get the MPPs and essential staff in after the Speaker understood that that might entail the use of force and that therefore was the mission of the LSS and the OPP.

57. The issues of whether the Speaker did in fact direct the use of force if necessary and if so whether this approval or direction could add anything to the normal police powers of the OPP were the subject of a great deal of argument. It appears clear to the Commission that Inspector Hope did genuinely believe that he had received the approval and direction of the Speaker with respect to the use of force and that this might be seen as a reasonable belief on Inspector Hope's part in all the circumstances. It is equally clear that whatever the reasonableness of that belief, it does not add anything to the consideration of whether the use of force was justified. There remains the need to conform to the standards set by Parliament in the Criminal Code as to the extent of permissible force in all the existing circumstances. The Speaker had no power to confer and the OPP had no power to accept a direction to add to or subtract from the rights and obligations respectively of a police officer in exercising his or her police powers. Unfortunately, it would appear that the definition of the mission of ensuring access and the approval or direction to use force to accomplish that mission were seen by the OPP as governing in the circumstances, so that according to Inspector Hope the normal policies including labour dispute guidelines were not in place.

58. Once the Speaker and the OPP had approved the SMEAC plan, for various reasons, neither of them took any steps to share these plans with OPSEU, the Government of Ontario in the form of the MBS, or the caucuses. As already noted, Metro also did not understand that a different set of rules in comparison to the normal strike guidelines and policies were in place with respect to the pending strike whatever may have been decided in the joint planning sessions.

59. It is worth focusing on the Speaker in this regard. As early as January, 1996 on the basis of scuttlebutt, the Clerk had commissioned outside lawyers to research and prepare court materials in anticipation of an attempt to block access. The fact that this work was being done was shared with the OPP but no one else was told nor was the work co-ordinated or work product shared with anyone. Except with regard to building management matters, the Speaker was, by conscious decision, outside the information loop with respect to the plans of the Government of Ontario, its co-occupier of the Queen's Park Complex. Whatever the concerns about perceptions of independence, the Speaker should have met with both the MBS and OPSEU, maybe even at the same time. A desire to preserve independence that ignores the reality of physical proximity when that proximity goes so far as sharing buildings and security forces is unjustifiable. Both the Speaker and the OPP should have had direct and early contact with OPSEU and the MBS to say "we're separate, we're different, the normal labour law rules don't apply here and there will be unusual consequences in the sense that our security may use force to enforce access if access is interfered with". All the representatives of the Speaker testified that no consideration at all was given to contacting OPSEU and that it would not have been possible or even appropriate to have done so. In the view of the Commission this attitude was and is entirely wrong-headed and made a large contribution to the debacle which ensued.

60. What is at least as difficult to fathom is why the Speaker did not then discuss or disseminate the assumption and the proposed use of force inherent in the SMEAC plan to the MPPs through the House Leaders. All MPPs would surely want to know that there was a real possibility that someone would try to keep them out and the police intended to use force to bring them in. The MPPs would then have had the opportunity to consider alternate arrangements or at least whether they wanted to be brought in by force. There could also have been discussions about using the contacts that at least two of the political parties had with OPSEU to avoid unnecessary confrontation. There are numerous things that perhaps could have been done. The opportunities never arose because there was no discussion.

61. This sort of communication would also have provided the House Leaders with an opportunity to inform the Speaker and each other what separate arrangements they were making with OPSEU, if any. As it turns out, in or around February 19, 1996 both the Liberal and NDP caucuses were corresponding with OPSEU on the subject of access including respect for and support of the proposed OPSEU picket line at the Legislative Assembly. The unedifying result is that the Speaker is drawing a line in the sand that neither OPSEU nor the MPPs know about and at least some of the MPPs are making very different arrangements fundamentally inconsistent with that line in the sand. The Speaker's Office should have kept the people they considered they were protecting much better informed and the caucuses should also have told the Speaker's Office about the separate arrangements they were making. Each pursuing separate and, as it turns out, inconsistent courses was another important ingredient in the recipe for disaster that was being mixed.

62. As at 21 February, 1996, therefore there was no effective co-ordination or planning amongst all the parties potentially involved. What discussion there was appears to have increased the confusion rather than clarified matters as between Metro and the OPP. The Clerk had sent a memo on 15 February, 1996 to the Speaker, the House Leaders and the caucuses to the effect that Legislative Assembly was not involved in the strike, would be open during the strike and the staff would be expected to come to work.

63. When the strike was announced, approximately one week later, the Speaker's Office sent a further communication, this time in the form of a bulletin, to all Occupants of the Legislative Precinct. The bulletin is important for what it does not say as well as what it does say. There is no mention in the bulletin of parliamentary privilege, the right to immediate and unimpeded access or the consequences if access is interfered with. In fact, the bulletin contemplates that there will be a picket line at the Legislative Assembly and expressly states "You may be expected to wait a short period of time before proceeding through the line - if so wait calmly and avoid confrontation" and sets out the procedure for non-critical staff who are unable to get in. This bulletin would obviously come into the hands of OPSEU through the OPSEU members who worked in the Legislative Assembly.

64. With this bulletin the Speaker, in a sense, crossed the Rubicon and was not advancing the theory and law which would be insisted on later and pressed before the Commission. The Speaker did not inform his public as he may well have been justified in doing in law that picketing the Legislature was akin to picketing a court, that the very existence of a picket line impedes access and was therefore a breach of the parliamentary privilege of unimpeded access. The Speaker would much later, on 18 March 1996, argue to the court that the Supreme Court of Canada case that held this with respect to courts was directly analogous and did so again in his submissions to this Commission. In that regard he is probably right in law. However, if this position was going to be taken it should have been taken at the time the picket line was first established. Failure to do so acted as an encouragement to OPSEU in imposing delays on the picket line that led to the blockage that was ultimately the basis for the Speaker's Pyrrhic injunction victory on 18 March 1996.

65. The Clerk testified that the Speaker could not negotiate or accept any diminution of a parliamentary privilege without a unanimous resolution of the House yet, in effect, this is exactly what the Speaker did by accepting the existence of the picket line. Further, even if one retreats from this position and accepts the fact of a picket line, there is, from the Speaker's view, again probably accurately in law, no way that an imposed delay by a picket line is anything but a breach of parliamentary privilege. Yet again this is exactly what the Speaker in this bulletin is forecasting is going to happen with nary a word as to negative consequences if it does. There is no need for a legal label like waiver, acquiescence or estoppel. The reader of this bulletin would take away the message there is going to be a picket line and delays that impede access are going to be permitted.

66. This may or may not have been the wise or appropriate way of handling the clear breach of the privilege. The course was taken however without a resolution of the House or indeed any prior consultation with the caucuses. Further, along with the practice in the next few weeks, this course would reasonably create the expectation in the minds of OPSEU that a unilaterally imposed delay (that OPSEU would elevate to a "protocol") would be tolerated. Equally importantly, an opportunity was lost to stake out the distinct position of the Speaker and indeed this announcement and the practice in the next few weeks would further blur an already less than bright line between the Government of Ontario and the Legislative Assembly insofar as the strike was concerned.

67. The House was in recess when the strike began on February 26, 1996, however MPPs and staff were obviously still coming to work at the Legislative Precinct. As part of the building security plan, only the East Door of the Legislative Building and the North Door at the Whitney Block remained open. It was possible once one was inside the Queen's Park Complex tunnel system through the subway tunnel or some other door to obtain access to the Legislative Precinct. The reverse would also be true; Government of Ontario employees who got in through the Legislative Building could get to their offices in, for example, the Frost Building, thereby avoiding picket lines at their premises. This

was technically not supposed to happen but, human nature being what it is, it did and further blurred the supposed separation.

68. A picket line went up at the Legislative Building from the on-set of the strike. The Speaker did not object or seek police or court assistance to clear it away. The head picket captain was Don Sheppard, President of the local that worked in the Legislative Building. Mr. Sheppard was unique among OPSEU officials in that he had been a candidate for the Progressive Conservatives in the 1995 election, remained a PC riding association President and just prior to the strike had attended a public dinner at the side of the Premier. Mr. Sheppard set out to run a mild picket line that would not disrupt the Legislative Assembly and offered to work with the Speaker and the OPP to circumvent the picket line. As a result, for approximately the first 10 days the picket line did not cause any real physical impediment to access.

69. As the strike went on longer than expected and emotions ran higher, this soft stance clearly did not sit well with OPSEU who began sending over other picket captains and people to toughen up the line. This began to occur in or around 7 March, 1996 and from that point on in time the line grew tougher. Picketers asked people to wait 10 to 15 minutes before going in and there were pushing and shoving incidents when some people, including MPPs, did not want to wait. The Sergeant-at-Arms testified that "It got quite nasty" on occasion and when Metro informed him they would not open a path through a line the OPP would go outside and rescue the individuals involved.

70. The Liberals and NDP who had reached a separate deal and were walking the picket line with OPSEU did not experience these difficulties. The Liberal representative who testified said that she often heard the LSS tell people that the 15 minute protocol was an acceptable thing and they should simply wait. For the NDP and at least some of the Liberals, this was not an overly difficult request and they were prepared to wait or join the picket line.

71. When the Progressive Conservatives began to encounter the tougher line some of their members were not happy and did not want to wait. There was discussion within the caucus and a representative approached the Sergeant-at-Arms to inquire whether such a delay was legal or whether injunctions might be sought. The Sergeant-at-Arms replied that it was not legal but the Speaker's Office would appreciate it if the PC Caucus would assist by waiting 15 minutes before entry. The same approach was made to the MBS and a similar response received. The Sergeant-at-Arms request was agreed to and conveyed to all members of the caucus although some individuals continued not to be prepared to wait and altercations ensued. On balance, however, the Progressive Conservative MPPs and staff acquiesced in the 15 minute delay request. A memorandum was actually sent by a senior PC staff person to the entire caucus that said an agreement to wait had been reached. This was not right but no subsequent memo was sent to correct the error.

72. The term "protocol" was much used and misused in the evidence before the Commission. The Oxford Dictionary definition is:

1. The original note or minute of a negotiation, agreement, or the like, drawn up by a notary, etc. and duly attested, which forms the legal authority for any subsequent deed, agreement, or the like based upon it.
2. The original draught, minute or record of a dispatch, negotiation, treaty or other diplomatic document or instrument; esp. a record of the propositions agreed to in a conference, signed by the parties, to be embodied in a formal treaty (1697).
3. Formal or official statement of a transaction or proceeding (1880).
4. In France, The formulary of the etiquette to be observed by the Head of the State in official ceremonies, etc.; the etiquette department of the Ministry of Foreign Affairs; the office of the Master of the Ceremonies (1896).
5. *Diplomatics*. The official formulas used at the beginning and end of a charter, papal bull, etc. as distinct from the text, which contains its subject-matter (1908).

73. This definition with its attendant imagery of ribbons, red wax seals and bewigged courtiers is not what we are talking about here. OPSEU characterizes the practice of protocols as "a grass-roots, practical response to reconciling the interests of employers and employees at the front lines of labour disputes ... developed by the employers and unions themselves ... evolved over many years as a form of self-regulation and compromise, and as an alternative to physical battles on the line.

74. OPSEU points to the extensive use of protocols of this type with the MBS throughout the strike, the acquiescence to the imposed delay in the weeks leading up to 18 March 1996 and asserts that "it was not unreasonable for OPSEU members to think [they] had at least a colour of right ... to use a protocol at the East Door of the Legislative Building".

75. Whatever one thinks about the practice of protocols, their place or lack of a place in judicial authority and the compromise through labour duress that allows them to be extracted, (and there were plenty of submissions contrary to those of OPSEU), it should never have come to the point where there could be any issue of acquiescence, practice or colour of right. The fundamental character of an agreement whether or not it is called a "protocol" is that there be a meeting of the minds of the parties. There is no evidence of any such express agreement between the Speaker and OPSEU on the terms of the protocol

or the length of delay. The parties including OPSEU and the Speaker should have spoken, addressed the issue expressly and settled it well in advance of 18 March 1996. The stumble-along and hope for the best method adopted by both sides contributed to the confusion of 18 March 1996. There were persons during the course of the Commission that suggested there was something offensive or wrong in the notion of OPSEU purporting to limit or regulate admission of persons to the seat of government in Ontario. It is offensive. No one has the right to set themselves up to impose delays and it is important to state that nothing occurred that would amount to a surrender of the individual MPP's right of access. However these protestations would have had considerably more force if they had been made or pressed in the days and weeks leading up to 18 March 1996 when those same persons knew that this was what OPSEU was doing and took no action.

76. This leads us to the week before the re-opening of House - the week of 11 March, 1996. Everyone knew the strike was heating up and that if it was still on on Monday that the Legislative Precinct would be the focus of attention and likely a massive demonstration when the majority party gathered together in one place for the first time since the beginning of the strike. In the days just before, how then did the parties prepare for 18 March 1996? The short answer is badly - the explanation of that short answer takes somewhat longer.

77. OPSEU planned its demonstration without consulting with the Speaker, MBS, the OPP, the caucuses or, with the exception of one phone message, Metro. OPSEU was planning to "shut down" the MacDonald Block until 2:00 p.m. and impose, cajole, agree upon, accept or extract (depending upon your view) a 15 minute "protocol" at the East Door of the Legislature Building. No doubt it would be difficult to expect them to co-ordinate with MBS or the Progressive Conservative caucus in the circumstances. There may also not have been any need to speak to the Liberals or NDP whose co-operation was already assured. The failure to talk to the others is not so easy to understand. The OPSEU planners were apparently unaware of the role of the OPP at the Legislative Building despite the fact that the OGPS, including the LSS, is part of OPSEU. Further, the planners did not contact the Speaker although again they were or should have been well aware of the structure of the Legislative Building through their locals who worked in the building. One OPSEU planner did call Metro and was advised who to contact on Monday morning. This was, to be sure, not a very satisfactory response from Metro but OPSEU should not have let the matter rest there. The obligation on OPSEU to do more increased as their plan to be aggressive at the MacDonald Block and funnel everyone to the East Door of the Legislative Building crystallized. The East Door was the only access point at the Legislature Building which was open during the strike. This was an inherently risky plan if OPSEU lost control (as eventually occurred) and OPSEU should have discussed it in detail at least with the police in advance. There can be no tenable objection in principle to this because OPSEU did discuss it with Metro according to its own evidence, on 18 March 1996 at 6:30 a.m. when Metro would not have the same opportunity to digest, and disseminate the plan. OPSEU's planning was deficient and the communication of its plan

to third parties non-existent. There is an element of wilful blindness in the planning of OPSEU. Their leaders always acknowledged that MPP access was a right in law that could not be breached. The OPSEU plan nonetheless made the blocking likely, if not inevitable. It is not satisfactory to bring large numbers of frustrated and emotional people together, point them at their "enemy", jam them altogether at one door and then say we're not responsible for what happens. It is true that this cannot and does not justify errors which may have led to confrontation and violence unnecessarily. It simply set the stage to make it possible or perhaps even likely.

78. The OPP had had the CMU on the premises for the first three days of the strike, although they were not deployed outside. The OPP and the Speaker knew that the picketers were requesting and on occasion attempting to impose a 15 minute delay on persons seeking access to the Legislative Assembly. There was no discussion before March 15, 1996 about what was intended for 18 March 1996 or what, if anything, should be done about the imposed "protocol", which was all the more fatal to the right of MPP access after the Legislature went into session on 18 March 1996.

79. On 14 March 1996 the officers in charge of the OPP planning, Regional Superintendent Currie and Hope, received hard and reliable intelligence from the Regional Intelligence Co-ordinator ("RIC") of the OPP. They differ as to what and how they were told. Hope testified that Currie was there for the whole meeting with the RIC. Currie testified that he spoke to the RIC separately and then took him in to meet with Hope and left them to talk. Hope testified that the RIC informed him and Currie that the intelligence was that nobody, including the police, was going to get into Queen's Park on March 18 and that persons would use violence to achieve their objectives. Hope understood that this violence would come in part from OPSEU. "I took it to mean OPSEU, OCAP [the Ontario Coalition Against Poverty], all of the particular groups, but not focused on any one in particular." On another occasion he testified that "As of March 14, that information was OPSEU and others. It was non-specific as to who would be exacting that violence". Currie, on the other hand, testified that his understanding of the intelligence was that it was not expected that the violence would be emanating from OPSEU, but rather from other groups. Currie was quite clear that the OPP had no intelligence that OPSEU would be the source of violence on March 18, 1996. It is difficult to comprehend how senior officers of the OPP could arrive at such different understandings as to what is a critical point based on the same hard intelligence. If Hope had had Currie's understanding, he would have been obligated to ensure that either he or Metro contacted OPSEU to advise them of the risk to their demonstration and their safety. There should have been this contact in any event. However, this miscommunication as between senior OPP officers no doubt contributed to Hope's approach to the day and the failure to have any meaningful contact with OPSEU in advance.

80. What to do with this 'hard intelligence'? The OPP planners (Hope and Hough) met early the next day, 15 March 1996 and came up with a "plan" that would (i) try to have

MPPs in before 7:00 a.m.; (ii) have MPPs who had not got in previously meet at a kiosk on the South Lawn and if they couldn't find an unobstructed door, at 11:00 a.m. the Conservatives would go to the South Whitney doors (an entrance that had been closed throughout the strike). If that entrance was obstructed the CMU would come out and create a cordon; and (iii) a second shift of NDPs and Liberals would go in at noon in a similar fashion through the rear of the Frost Building.

81. It is certainly not the central thrust of this Commission to second-guess plans or decisions that were made in good faith by officers who were attempting to the best of their abilities to do their job under the MOU. The defects in this plan are obvious with hindsight. However it was discussed with and essentially approved by representatives of the Speaker's Office.

82. After meeting with the Sergeant-at-Arms, the next planning meeting that the OPP had on that day was with Metro. Two members of each force who were present at the meeting testified before the Commission. Based on their evidence one might conclude that the two forces were not at the same meeting. Their respective versions are diametrically opposed. The OPP considered that they communicated the hard intelligence to Metro including the fact that the demonstrators would use violence to achieve their ends. They also believed they discussed the CMU cordon plan and obtained Metro's concurrence. Metro, on the other hand, recalls a discussion about proceeding slowly, no concrete intelligence as to violence but that if trouble did occur, Metro's foot patrol would withdraw and Metro POU would be brought in. So far as an OPP plan, Metro thought that the OPP plan was to drive MPPs into the building and would have had a great deal of concern about a plan that would have the MPPs meet in front of a building. They would have thought that this was not a viable plan.

83. The complete details of the meeting and the almost inexplicable level of discrepancies in the evidence are dealt with in Appendix B(1). This meeting and the credibility of one side or the other occupied a great deal of time at the hearing. The consideration of the evidence with respect to this meeting was viewed by the Commission as extremely important. The acceptance of the version of one force would mean that the Commission could not believe the evidence of the officers from the other force with respect to this meeting and that, in turn, would cast a doubt on their evidence with respect to everything else. Based on their overall testimony, their candid admission of other defects in their procedures and the steps they have jointly taken to address those both prior to and during the hearing, the Commission considers that representatives of both forces testified sincerely about their understandings and misunderstandings with respect to this meeting. The objective proof of that and perhaps the most important factor in allowing the Commission to come to this conclusion is that leaders of both forces briefed their troops on Monday morning in accordance with their respective understanding of the plan for the day. It is simply not credible to suggest that Superintendent Parkin of Metro would, as he did, let his officers attend at Queen's Park in soft equipment without warning

of the threat if the hard and serious intelligence the OPP claims to have had with respect to violence had been brought home to him. Similarly, Inspector Hope briefed his forces on the morning of 18 March 1996 in accordance with his evidence as to the understanding he had as to that intelligence and the prospects for violence.

84. The failure of the OPP and Metro to co-ordinate their information and plans was a major contributing factor to the confusion and events of 18 March 1996. This was a serious error for which both forces are in part responsible. Errors such as this occur when there are divided forces and commands. The Commission wants to make it very clear, however, that in drawing the conclusions that it has about miscommunications, it does not intend to denigrate the professionalism or abilities of the persons who testified nor make any finding on disciplinary matters. The officers of the OPP and Metro who testified were and are able, intelligent, dedicated and thoroughly professional policemen and women. The people of the province of Ontario are truly fortunate to have persons of this calibre in their police forces.

85. Part of the miscommunication involving the police forces and OPSEU was the result of technological shortfalls. These aspects of this miscommunication are addressed in Appendix C.

86. One result of miscommunication at the meeting of the OPP and Metro on 15 March, 1996 is that no communication with OPSEU occurred. It is clear that such communication should have taken place and likely would have if the seriousness of the intelligence had been brought home to Metro.

87. The communication of Inspector Hope's hastily developed plan to the caucuses by the Speaker was less than perfect. The Sergeant-at-Arms was aware that on 15 March, 1996 the situation had taken on a "different dimension" and he considered that there was a high possibility that there would be an attempt to breach security and to enter the building. It is unclear whether this was as a result of direct information from Inspector Hope or whether the Sergeant-at-Arms reached this conclusion on his own.

88. The Sergeant-at-Arms communicated the plan to the Clerk who informed him that the plan should be made available to all the caucuses. The Sergeant-at-Arms testified that he followed the Clerk's instructions. The NDP didn't want to hear the plan because they said they didn't need it and they wouldn't have a problem getting in. The NDP representative who testified indicated that he had made inquiries of all members of the NDP Caucus and no one recalls getting contacted on that day. The Liberals, according to the Sergeant-at-Arms, felt they wouldn't likely need it but wanted to hear the plan in case they did need to join in. The Liberal representative who testified said that she recalled the conversation with the Sergeant-at-Arms and told the Sergeant-at-Arms that she was talking to OPSEU on quite a regular basis. She informed him that it was her information that she had been assured that members who wanted to get in would get in,

although the wait may be a bit longer than usual. She informed the Sergeant-at-Arms that the Liberals would not go through with security if it involved the use of force. Importantly, she testified that the Sergeant-at-Arms had informed her that he had intelligence that OPSEU planned to deny access and she informed him that she put that very thing to OPSEU and they had denied it. This information was not relayed to Inspector Hope. Once again it is clear that the communications were not effective.

89. The Progressive Conservative caucus was obviously the party at risk. They received news of the plan Friday afternoon and it was communicated to all members of the caucus. By then, it was too late for some of the MPPs, based on prior commitments, to take steps to be in the building before 7:00 a.m. The details of the 11:00 a.m. plan as to the use of the CMU and how they would be brought in were not made explicit to the Progressive Conservative Caucus. The Sergeant-at-Arms did not pass on at this time the fact that there was intelligence of the potential for violence or that there was a plan to deny access to the MPPs to the building. It is difficult indeed to know why this information was not passed on as it may well have impacted the actions taken by the MPPs and they would surely want to know about it.

90. One further area needs to be addressed in the week of March 11, 1996 and that is the actions of the Speaker. On 13 March, 1996 the Speaker's Office sent out a revised bulletin expressly addressing 18 March 1996. This bulletin reiterated the statements in the 23 February, 1996 bulletin to the effect that there would be a picket line, people could expect delays and to wait a short period of time. This bulletin again, in effect, countenanced delay.

91. The very next day, Thursday, March 14, 1996, when the Clerk returned from two days off, he sent a letter to Sheppard, the president of the local with copies to the president of OPSEU and the House Leaders. The letter stated, "It is my understanding that members of the Ontario Legislature, as well as members of the staff of the Ontario Legislature, have been asked to wait for various periods of time before entering the building. This situation is totally unacceptable and I hope that it will cease as of now." The letter set out the position of the Speaker that the Legislative Assembly was not a party to the present strike and stated that the MPPs and the staff were fully protected by the rights of access provided by the laws of parliamentary privilege. Sheppard got his copy of the letter on 15 March, 1996 but didn't communicate it to anyone at OPSEU before he arrived at the Legislature Assembly on 18 March 1996. In light of the unique, if not anomalous position of Sheppard and the small size of the local being 115 members out of 65,000, addressing the letter to him was not particularly useful. OPSEU did apparently get the letter on 15 March, 1996 but then the letter never found its way to the OPSEU planners. At the very least the bulletin of 13 March, 1996 and the letter of 14 March 1996 conveyed a mixed message.

92. The 14 March, 1996 communication was woefully inadequate in light of the past bulletins and the practice. It does not specify what was to happen in the event of non-compliance with the letter and continuance of the picket line and the delays that had occurred up to that point. It is in part the fault of OPSEU for not reacting to the letter, but as a practical matter, this could not be considered to be a real attempt at communication. There is a difference between real communication and formal communication for the record. The Speaker should have met with the House Leaders, or convened a meeting of the House Leaders first and used their contacts, if necessary, to get to OPSEU. A clear and direct message could have then been conveyed either indirectly or directly to OPSEU that the delays would not be tolerated and the consequences if there was an attempt to impose them. All the persons involved seemed to be taking steps to avoid face to face meaningful dialogue.

93. Similarly, the Government of Ontario had implemented its injunction system and it offered its assistance in this regard. A lawyer with the MBS had phoned the Clerk and asked if they could provide assistance which would help to ensure that the efforts of the Speaker were co-ordinated with the efforts of the Government of Ontario. The Clerk rebuffed this approach, saying they were proceeding separately. Indeed, in light of the polished material that was put before the Court on 18 March 1996, it is apparent that that material was ready the week before. At that point, there had been a picket line and delays imposed on MPPs as well as nasty incidents on the line. It is difficult to understand why the Speaker did not proceed to seek an injunction prior to 18 March 1996. The Clerk testified to the effect that he had been advised it was a novel issue and there had to be an "event", a blockage before seeking an injunction. The Clerk did not want to lose if an injunction were sought. In any event, no court material had been provided to OPSEU before 18 March 1996, the lawyers were not in contact and no injunction had been sought earlier. In the result the injunction ultimately obtained on March 18, 1996 was rendered well after the end of the demonstration.

94. It is possible to disagree as to whether an injunction could have been obtained before 18 March 1996. It appears to the Commission that there was certainly ample basis to serve materials to seek such an injunction in the week prior to 18 March 1996. At the very least this motion would have served to educate the other side on the difference between the Legislative Assembly and other buildings, have a judge up to speed, the lawyers in dialogue and could well have avoided the necessity of having to seek an injunction on 18 March 1996. The Speaker, in his submissions, argued that to take this position would be to condone an abuse of process. The Commission, after hearing all the evidence and reviewing the exhibits, considers that there was more than sufficient basis to properly initiate proceedings as at 15 March, 1996. As elsewhere observed, the Speaker may well have made a different decision in this regard had it been informed of the "hard intelligence" in the possession of the police on March 14, 1996. The OPSEU witnesses were clear that they would have complied with an injunction and at the very least

there would have been expedition for Monday so that the injunction would have been timely.

95. As a result of all of the foregoing, the Commission concludes that a major defect in the planning for 18 March 1996 was the idea that the approval of the Speaker could add a justification to the mission of the OPP. The logistics of the planning in terms of the forces that the OPP and Metro were to have on hand is a matter of police judgement and in any event there does not appear to be any particular ground for criticism in that regard. The planning of OPSEU was unwise in the sense that it would inevitably funnel all people to one door with the inevitable result that the door would get choked. Further, it was simply wrong in law for OPSEU to consider that it had any "colour of right" to impose a protocol to delay or impede access to the Legislative Assembly of any person, MPP, essential staff or member of the public. A major and root cause of what occurred on 18 March 1996, however, is the almost total lack of real and meaningful communication or discussion between the parties who were to be involved.

E) The Events of 18 March 1996

96. The following represents only an overview of the events that transpired on 18 March 1996, at Queen's Park. It is especially important that the reader peruse the detail with respect to these events that can be found in Appendix B(2) and B(3) and the compiled video tapes at Appendix F(2).

97. The seeds for the chaos of 18 March 1996 had been sown by the poor planning and communication the week before. The parties had either no idea or the wrong idea about who to talk to on the day when things went off the rails. It should be stressed that in providing an overview the Commission does not intend to suggest that there was any sensible, organized or planned progression of events on the day. There was no nerve centre or central command for any party to collect information, analyze it, or to issue commands or directions and control events. The absence of this unified or central command for the police forces was one important factor. The absence of the Speaker coordinating with the caucuses was another. Similarly, there was no demonstration headquarters for OPSEU. Everything was being done on a catch-as-catch can basis on the ground as the day swirled out of control over the extensive area of the Queen's Park Complex. For the most part the parties were separately pursuing their own agendas or missions as the day lurched onward.

98. A one paragraph capsule of the day is as follows: In the early stages of the day, the funnel to the East Door was "working" in the sense that people were getting in either after lengthy delays and running a gauntlet of verbal and physical abuse at the East Door or by accessing other entrances to the rabbit warren that is Queen's Park. As these began to be shut down one-by-one and the crowd at the East Door grew so that the OPSEU marshals lost control when there was still a relatively small number (15-20) of MPPs

(although no one was keeping track) who needed to get access. The Speaker was a non-factor in that the Clerk and Sergeant-at-Arms had gone to court to apply for an injunction and the Speaker was in his apartment in the Legislature Building, not playing any part. The Speaker testified that he only became aware of what had occurred from statements in the House in the afternoon and viewing TV that evening. Arranging access was thus in the hands of the OPP and Metro. Those forces were improvising plans in the heat of the moment on the run and most importantly not proceeding on the same policy basis. By reason of his view of his mission and the seriousness of what had occurred to date, at or around 11:30 Inspector Hope "took the lead" and used his CMU to get 4-5 MPPs in at North Whitney without the direct involvement of Metro. The plan was poorly conceived and executed. The CMU used force to bring the MPPs in. As a global conclusion, it is not possible to say that any force was necessary as any number of other steps that should have been taken before force was used, were not. The Commission has not addressed individual instances of the behaviour of either police officer or demonstrator. That is outside its mandate. The North Whitney incident dismayed both OPSEU and Metro. The senior Metro officers had been surprised to learn the CMU had been used. They wanted to take steps to ensure that there was no repetition. The OPP did not want to take the time to meet to plan because of the time pressure it felt to get the MPPs in before 1:30 p.m. Metro and OPSEU began to talk about co-operation and Metro involved the OPP over the phone, who were reluctant to use or trust OPSEU. Another plan was hastily improvised for the North Frost Building. The planning of North Frost was incomplete and again the execution was poor. Before Metro and the OPSEU marshals could implement the plan as they understood it, the OPP CMU had again taken the field and as a result the proposed plan was not implemented and a brief violent confrontation of approximately 5 minutes occurred. The CMU used force including batons and pepper spray. Again, as a global matter, it is not possible to say that any use of force was a necessity. It is not clear whether the joint OPSEU-Metro plan would have worked, however the opportunity to find out was lost when the CMU took the field. Again the Commission is not concerned to assess individual conduct or responsibility by reason of the Terms of Reference but rather the Commission has limited its characterizations in this and similar confrontations to an assessment of the likelihood as to whether the goal could have been achieved without the use of force, as in the episode at 9:00 at Frost South. The demonstration was planned to end at 2:00 p.m. in any event and for the most part was over by that time. Transportation Minister Leach was unfortunate enough to arrive on foot at North Frost just after the CMU had used their batons and pepper spray and was ill-treated by the crowd who took out their frustration and outrage on him. The Clerk and the Sergeant-at-Arms arrived back at the Legislative Assembly around 7:00 p.m. with the injunction granted by Winkler, J.

99. The expansion of this capsule summary occurs both here and in Appendices B(2), B(3) and F(2). A mass picket and demonstration was staged at the Queen's Park Complex for seven hours from approximately 7:00 a.m. to 2:00 p.m. on 18 March 1996. During this period, there were clashes of varying degrees of violence between the OPP's Crowd Management Unit and demonstrators, at three places at Queen's Park, lasting in all for

about 20 minutes. The CMU came armed with shields, batons and pepper spray. The crowd was noisy but aside from waving placards were unarmed.

100. A number of different groups were represented in the crowd on 18 March 1996. Striking members of OPSEU, from both within and outside Toronto, constituted a large percentage of the crowd. Also present were those persons, affiliated with or supporting trade unions, who came to Queen's Park on this date to support OPSEU in this strike, and who, at times, took part in walking the picket lines initiated by OPSEU. These groups included the Canadian Auto Workers, the Steelworkers, the Ontario Secondary School Teachers' Federation, the Union of Machinists, and members of the Teamsters' Union.

101. Finally, police witnesses at the Inquiry testified that members of groups or organizations other than trade unions attended this demonstration ostensibly to "piggyback" on OPSEU's demonstration and perhaps hijack it for their own purposes, including creating chaos or anarchy, or selling a viewpoint or objective entirely different from OPSEU's. The tapes reveal that these interventions may have caused or contributed to the difficulties encountered by OPSEU in controlling the picket lines as the day wore on.

102. Both police forces were separately briefed very early in the morning. Metro officers were briefed on the basis that it was a normal day on the picket line, no mention was made as to hard intelligence of expected violence. The OPP were briefed on the basis that violence was expected and they were to use as much force as was necessary to ensure that MPPs get safe access. The difference in the briefing as well as the difference in crowd control experience in the two forces contributed to the wide divergence in the approaches of the two forces. The OPP CMU were not out mingling with the crowd but rather inside listening to the noise of the crowd and later the radio calls of OPP plain clothes officers who were on the verge of seeking emergency assistance. In addition, officers in charge of the CMU and the actual members of the CMUs, although technically qualified, did not have much actual experience and in some cases no experience in policing a picket line or deploying in a hostile crowd situation. It is not difficult to understand in all the circumstances why, when ultimately deployed, the CMU would consider that there was a real and present danger to the MPPs and themselves that led them to proceed in the manner they did. Inspector Hope considered it his mission to get the MPPs in by 1:30 and that the threat of violence was serious. Although objectively and with hindsight, the threat was not so grave, it is important to understand the subjective state of mind of the CMU based on the intelligence, briefing and the events of the day. Metro, on the other hand, were out in the crowd in soft equipment. They knew the OPSEU demonstrators and did not expect violence from them. They were experienced in crowd situations and were prepared to take a go slow approach which, although it might give the demonstrators momentary mini-victories, would see everyone go home at the end of the day uninjured and with the MPPs who wanted to be in their seats in the Legislature Chamber. The story of the day is really the three occasions when the less experienced OPP took the lead on the

basis of their expected threat and adversary with hastily improvised plans that did not leave any time for communication with the crowd or the gradual escalation of force.

103. OPSEU marshals and Metro also spoke very early in the morning. OPSEU says it disclosed its plan to take a harder line at the MacDonald Block and impose a delay of 15 minutes at the East Door of the Legislative Assembly. Metro apparently did not pass this information on to the OPP, although Staff Inspector Watson of Metro recalls that there was a discussion that a protocol would be set up by OPSEU. An opportunity to disabuse OPSEU of its "right" to insist on any delay was missed.

104. Initially, it appeared that all was going according to OPSEU's plan. A 15 minute delay was being imposed at the East Door to the Legislative Building, and complete blockages were quickly reported at other entrances to the Queen's Park Complex. As the numbers of persons patrolling the picket line increased, however, the evidence and the tapes clearly show that OPSEU lost control over the conduct of admission of the MPPs, and consequently a number of Members and staff, particularly Members of the P.C. caucus, were subjected to an increased delay, amounting finally to blockage, and an increased level of harassment at the picket line. An uncounted number of PC Members either spent the night in the building or arrived pre-dawn before the complete blockage action became serious on the morning of 18 March 1996.

105. As noted above, the OPP detachment at Queen's Park saw as their principal duty ensuring the entrance of the MPPs. Early on a squad of the CMU engaged a group of Steelworkers at the subway tunnel with the result that that door was closed for the day. Then, as early as 8:30 a.m., the OPP's CMU was deployed outside the buildings at the Queen's Park Complex with an eye to escorting MPPs in to Frost South and thence by tunnel to the Legislative Building. Although the CMU were ostensibly to be a "last resort", there was no consultation with Metro before this deployment by the OPP and no preliminary lesser steps taken. During this initial foray at 8:30 a.m., one squad of the CMU, totalling eight officers, in hard tactical gear, exited from the rear entrance of the South Frost building to face roughly five to ten protestors, and escorted three to four MPPs inside. Approximately fifteen minutes later, at 8:45 a.m., two squads of CMU officers exited at the same location, met with ten to twenty protestors, and escorted another three to four MPPs inside. At least one officer of Metro witnessed and was concerned with the pushing and shoving by the CMU during this deployment. It is difficult to credit that approximately 5 hours before the session of the House and 2 hours after the demonstration started, an emergency existed so as to require the "last resort" use of the CMU. Metro and OPP drew different conclusions from these sorties. Metro thought the OPP were premature and the OPP considered that the briefing with respect to the expectations of violence had been confirmed. Again, the Commission considers these differing conclusions to be based on the greater experience of Metro in the handling of large crowds and more prior exposure to OPSEU.

106. At approximately 9:00 a.m., the CMU was preparing for a third deployment outside the building to escort MPPs, when Inspector Hope, in command of the unit, was approached by two Metro officers, Staff Inspector Watson and Sergeant Pearson, who suggested that they speak to the crowd to arrange for access of a number of MPPs who were approaching the door, rather than have the CMU engage the crowd again. Inspector Hope acceded to this request, and the Metro officers were able to persuade the crowd of about 60 to part so as to allow for the access of 35-40 MPPs and essential staff. In Hope's mind he then passed the lead role in MPP access operations for the day to Metro. Metro did not consider this to be the case and this added to the confusion. There never was a single commanding officer in charge of all the police forces on the field that day. The cost of this failure in planning mounted as the day progressed.

107. Throughout this time, the record shows that a number of MPPs and essential staff were able to gain access either by waiting at the East Door for 15 minutes or longer (although this entrance was completely blocked by 10:30 a.m.) or via one of the myriad other entrances to the Queen's Park Complex. While entering the building, these people were subjected to a range of abuses, from being verbally harangued, to being spat upon, physically jostled and even bitten. No count was kept by the LSS or the Speaker's staff of the number of Members inside the Legislative Assembly at any given time. It would appear that all NDP Members obtained access to the buildings, as they had joined the members of the Union in walking on the picket line in front of the Legislative Building. Some Liberal Members walked the line and obtained access in the same manner. The PC Members did not join the picket line and had no arrangement with OPSEU for entry.

108. The video tapes record and the other evidence reveals a complete blockage of the East Door for between 1½ to 2 hours from around 10:15 a.m. During that time the crowd was chanting, among other things, "Nobody In, Nobody Out". The OPSEU marshals were trying to establish control and reinstitute a 15 minute delay but the mob mentality had taken over. OPSEU through its planners may not have intended for this to occur but their lack of planning and communication as well as their faulty plan in funnelling everyone to the East Door led to the loss of control and ultimate blockage. In putting in place the circumstances that led to a complete blockage of the East Door, OPSEU had set up a situation that crossed over a line they had identified the week before as one they did not wish to cross over; a complete blockage of access of MPPs.

109. The original police plan to get MPPs into the building was the "11:00 plan" adopted for MPPs who had assembled at the parking kiosk at the south driveway. At or around that time an OPP officer was radioing that he may have to "go 10-78" which is an emergency signal of an officer in need of assistance. A Metro officer in the same location saw no basis for alarm. Uniformed Metro officers and plainclothes OPP officers escorted a number of MPPs on foot across Queen's Park Circle towards the south door to the Whitney Building. However, protestors quickly moved in front of the police escort, and blocked the doors. The pursuant attempt by Metro to escort the MPPs up the narrow

stairs and through the crowd at the doors resulted in a stand-off lasting roughly five to ten minutes, during which time police officers, MPPs and crowd members stood pressed in close quarters on the stairs to the Whitney Building. Inspector Hope and his CMU were just inside the South Whitney doors. Inspector Hope spoke to Superintendent Parkin of Metro and indicated he might have to deploy the CMU. Superintendent Parkin asked him not to. After it became clear that attempts to access the Building would be futile, the officers and MPPs retreated, and the MPPs got into Metro vans on Queen's Park Circle, and left the scene.

110. Inspector Hope considered the demonstrators had scored a "psychological victory" and viewed the development at South Whitney with real concern. He went outside on foot and decided, in his words, in the absence of an immediate Metro plan to "retake the lead". After a brief meeting between Metro and OPP officers, it was decided that a diversionary plan was to be attempted at 11:30 a.m., wherein Metro officers would create a cordon at the south end of the Whitney Building, drawing interested members of the crowd. At the same time, the OPP would escort MPPs driven to the site in Metro vans, into the north end of the Whitney Building. The evidence from Metro and OPP again diverges but due to the brevity of the co-ordination discussion, it is at least clear that many of the details of the plan were left unsettled or misunderstood and that the OPP and Metro once again did not share a common understanding of the plan. At the very least the senior Metro officers did not understand that the OPP intended to use the CMU and were surprised when that occurred.

111. The diversionary aspect of the plan started as a success, as crowd members were drawn to the south end of the Whitney Building. However, things went very wrong very quickly. A lack of co-ordination between Inspector Hope, who was with the Metro vans, and the CMU, who was in the basement of the Whitney Building, led to the CMU deploying well prior to the arrival of the vans. The CMU left the Whitney Building basement, and proceeded up a loading ramp to the line of protestors at the top of the ramp. There was some communication with the crowd by bullhorn which received a negative response. There was no clear communication as to what the OPP wanted nor warning as to the use of force or the other consequences of non-compliance. At the top of the ramp, a chain across the driveway separated the crowd from the CMU. Upon a command from Inspector Hope to get out of sight, the unit withdrew down the ramp, around a bend. While being out of sight of those protestors at the top of the ramp, the CMU remained visible to an ever-increasing number of demonstrators who started to arrive from the south end of the building. The diversion plan was in shambles. There was no impediment to regrouping and trying again somewhere else but this option was not considered.

112. After roughly ten minutes, the CMU received word from Inspector Hope that the Metro vans were approaching, and returned up the ramp. Without stopping they stepped over the chain, and went into the crowd, pushing people aside with shields, and using baton blows to the knees to convince those otherwise recalcitrant to move. During this

episode, one picketer received a baton to the head, and fell, bleeding, to the sidewalk. It appears from a review of the videotape evidence that this blow was struck on the back-swing of one of the police officer's batons.

113. The OPP formed a cordon, which by their own admission was not as secure or effective as they would have liked. The MPPs disembarked from the vans which had by now arrived at the top of the ramp, and proceeded over the chain, and down the ramp into the basement of the Whitney Building. After ensuring that the fallen protestor was being adequately cared for by picket captains and Metro Ambulance representatives, the CMU withdrew down the ramp, and returned to the basement of the Whitney Building.

114. After this incident, around 12:30, there were discussions between Metro and the OPP. Metro wanted to meet but Inspector Hope considered he was under time pressure. Hope testified that the 1:30 deadline was real because it was his understanding that "by not having all the MPPs in, that perhaps the business of the House would not be conducted, and more importantly, potentially, the throw - or overthrow, if you will, of the government. That was my understanding." Accepting that this was his understanding explains his urgency.

115. However the urgency in this regard appeared to be based on an assumption which was erroneous in that there was at that point absolutely no prospect of an imminent vote in the House. As earlier mentioned there was, in any event, no running tally kept of MPPs who were seeking access but had been kept out and only a handful of MPPs left in the vans. The Speaker was not keeping this count and in any event Hope did not seek to find out. Hope then determined to use the door of the Frost North building to bring in the MPPs.

116. At around 12:45, Metro was approached by the OPSEU security marshall team headed by Gary Adams, who, having learned of the North Whitney incident, volunteered to assist in ensuring MPP access. The OPSEU marshals were informed of the North Frost plan, which was maintained, despite suggestions of alternatives from the marshals.

117. Inspector Hope was informed by Metro of the marshall's offer, and, initially was reluctant to reveal his planned access point to OPSEU. He was informed by Metro that OPSEU already knew what access point he intended and Metro subsequently prevailed upon him to accept the involvement of the OPSEU marshals. Unfortunately, the communications between the police agencies were again such that the two came away from the discussions with a different concept of what was to occur. Metro and the OPSEU marshals believed the plan was for the marshals to escort the MPPs into the building, with Metro backup if assistance were needed. The OPP came away with the impression that the marshals were going to assist the CMU in creating a path for the MPPs. Once again Metro and the OPP did not have a common understanding of the plan. While it is possible to be critical of OPSEU with respect to their planning for the day, the OPSEU marshals

are to be commended for their offer of assistance at this time. It is clear that Metro and the OPSEU marshals considered that they should work together to ensure no one else got hurt. That this went awry cannot be laid at the doorstep of OPSEU and one can well imagine the feelings of the marshals when, planning to work with Metro, they turned the corner and encountered the OPP CMU with batons out and in violent confrontation with the demonstrators.

118. In the result, Metro vans with MPPs in them arrived at the Frost North Building at about 1:30 p.m., to find a crowd which had grown to several hundred surrounding the doors. There was no radio link between the OPP and the vans. According to Metro's understanding of the plan this would not have been critical as Metro's Area Foot was already there and could await the marshals to then attempt to have the crowd stand back as Metro did not perceive any danger to the vans. Indeed Staff Inspector Taverner the very experienced commander of the Metro POU in the vans saw no need to call for his POU units who were on stand-by just around the corner.

119. Inspector Hope had a different understanding of the plan and he, not being in contact with the vans, considered that the MPPs were or might be in peril in the crowd. He therefore ordered his CMU out. The CMU, again in hard tactical gear, was deployed outside almost immediately. The CMU created a cordon by pushing crowd members back with their shields. Once again, communication to the crowd by the OPP prior to deployment was deficient. The security marshals arrived shortly thereafter, and inserted themselves between the CMU and the crowd on the east side of the cordon. On the west side of the cordon, significant pushing and shoving took place, with CMU officers using shields, batons and occasionally pepper spray to subdue the crowd.

120. MPPs exited the Metro vans and entered the Frost North Building. During the disembarkation, one unit of Metro's POU was called in to assist the CMU in creating the cordon and managing the crowd. The POU, while carrying plexiglass shields, did not have their police batons drawn. Once the MPPs were inside, the CMU withdrew back into the Frost North Building, and the POU left the scene to the east.

121. Ironically, this, the more serious of the confrontations, occurred about thirty minutes prior to the scheduled end of the OPSEU demonstration. No one among the leaders of the two police forces, the Speaker, and the manager of the LSS at the Legislative Precinct and the Area Command appeared to be aware of the scheduled termination of the demonstration at 2:00 p.m. The police intelligence gathering apparatus had either not been able to obtain the flyers and hand-outs that set out the schedule or learn of this information otherwise or, if they had the information, it had not been communicated to the commanders of the police force. The last deployment of the CMU at Queen's Park on that date occurred at about 1:30 p.m., the time fixed for the opening of the session of the Legislature in the Legislative Building. The Assembly opened at 1:30 p.m. as scheduled, with the Speaker and apparently almost all MPPs who planned to attend

present. Transportation Minister Leach arrived at North Frost on foot around 2:00 p.m. and was unable to gain entrance. The crowd was openly hostile. The Minister was spat upon and man-handled until escorted by Metro.

122. The scenes at North Whitney and North Frost were depicted on television tapes turned over to the Commission by local television stations, television networks, and OPSEU and on video tapes produced on the scene by the police forces. All of these tapes constitute Appendix F(2) and are delivered with the original copy of this Report.

III. THE ROOT CAUSES OF CONFRONTATION LEADING TO VIOLENCE

123. The roots of this public disorder on 18 March 1996 were as follows:

- (a) The use of two separate and independent police forces in Queen's Park. Although these forces were co-operative and had good interrelationship, they could not match the benefits from a single police force in charge of all planning and operations particularly for large scale events. As a result, there was:
 - (i) no single officer in command of planning and the ensuing operations;
 - (ii) no comprehensive, uniform and precise plan developed for the strike generally or for 18 March in particular;
 - (iii) no single command post in direct communication with all police units, security services and OPSEU;
 - (iv) no single secure communications network of radio and telephone linking the command post, all police units, police headquarters, the Speaker and his security service and OPSEU;
- (b) The unique and important characteristics of the Legislative Assembly in law and in political organization of the community were not communicated in advance by the Speaker to OPSEU or to Metro. This led to a failure of Metro and OPSEU to appreciate the priority of escorting the MPPs into the Legislative Chamber before the beginning of its sessions.
- (c) The failure of OPSEU to ensure that the east door to the Legislative Building would remain open and capable of handling all those seeking access, given the avowed plan of OPSEU to block all other access points during the course of the day.
- (d) The plan of OPSEU to impede the access of MPPs and thereby breach parliamentary privilege.
- (e) The Speaker's narrow view of the independence of the Legislative Assembly from the Executive Branch led to a total lack of co-ordination on matters relating to the planning for the strike, the inter-communication and exchange of information and general sharing of views on the strike and demonstration as it unfolded. In short, independence became isolation in the case of the Speaker and co-ordination of effort and co-ordination of information were two of the casualties.

- (f) The lack of close contact between police and Speaker's staff and the lack of exchange of information including, for example, police intelligence with respect to rumoured violence, and the hour of closing of the demonstration scheduled by the Union.
- (g) The failure of the Speaker and police to communicate with OPSEU on the day.
- (h) The divergent views of OPP and Metro on the role of the police forces on 18 March 1996. The general conflict of approach was the "go slow" attitude of Metro on the one hand and the "dynamic and fast" approach of OPP on the other.
- (i) The failure of the police and the Speaker as represented by the security service to warn the crowds of the action to be taken by the police should the crowd not move aside in order to allow entry by the MPPs.
- (j) The mode and timing of deployment of the CMU of the OPP.
- (k) The failure of the Speaker to proceed earlier than 18 March 1996 to obtain an injunction.

IV. RECOMMENDATIONS

Scope of these Recommendations

124. It has been twenty-three years since the Camp Commission of Inquiry was appointed by the Legislature to study and report upon the operations of the Legislative Assembly, its relation to the public and the security to be provided the individual Members and the Assembly as a whole. The Commission's report was implemented in part in 1974 by the *Legislative Assembly Act*.

125. The *Act* is the legislative basis for the Speaker's control over the Office of the Assembly and such parts of the Legislative Building in addition to the Legislative Chamber as may be designated by the Lieutenant Governor in Council. The *Act* goes on to direct the Speaker to establish security guidelines for these areas. Prior to the *Act* the Speaker did not have control over security in the Legislative Building other than the Legislative Chamber.

126. In 1973 the Solicitor General had implemented a new policy for the performance of non-police or security duties in all government buildings including the Legislative Assembly by a newly established force, the Ontario Government Protective Services ("OGPS"). Following the tragic incident in the Quebec National Assembly in 1984, policing arrangements at Queen's Park were enlarged by the addition of a detachment of the Ontario Provincial Police ("OPP") as a police supplement to the OGPS.

127. By 1992, all of the Legislative Precinct was placed under the control of the Speaker, including security matters. All of these arrangements were combined in agreements between the Solicitor General and the Speaker which clarified the administrative framework for the Office of the Assembly.

128. This Inquiry is concerned only with security services and policing at Queen's Park. No recommendation is made concerning the maintenance and administration of any buildings in Queen's Park, with the exception of the recommendation that the Speaker shall not be responsible for the provision of any services, security or otherwise, to any buildings in Queen's Park, other than the provision of security services, as herein described and defined, to the Legislative Chamber located in the Legislative Building.

129. The role of the Speaker as the presiding officer in the Legislative Chamber is not the subject of any study or recommendations in this Report.

130. No recommendation is made as to the procedure for financing and accounting for security services at Queen's Park, it being sufficient to note that the *Legislative Assembly Act* would require amendment where necessary to support the realignment of security services at Queen's Park as recommended later in this Report. Similarly, no need would arise because of any recommendations herein made for the revision of present arrangements relating to operating and administrative expenses with reference to services other than security services required for the lands and buildings located in Queen's Park.

131. No recommendation is made for any revision of the operations of Ontario Realty Corporation ("ORC") in this region.

132. It is the essence of all recommendations in this report that there be a reduction in the role and responsibility of the Speaker in the administration of matters related to policing and security services in Queen's Park. In so doing the Commission is conscious that it is recommending a reversal of the change in this regard implemented in 1974. It is the object of these recommendations that this plan of reorganization be put into effect without reducing the independence of the Legislative Assembly and the ability of the MPPs to perform their legislative duties and functions without interference from any other branch of government. The Commission considers, provided there be proper parliamentary training of the security force, that this change will streamline the policing of the area, be more effective and cost-efficient and at the same time preserve the important and separate character of the Legislature.

133. These recommendations are put forward for the simplification of the operation and organization of security services at Queen's Park and for the better co-ordination of all policing and security forces at Queen's Park.

134. In the making of these Recommendations, the Commission is driven by the hope and intent that Queen's Park shall remain open for appropriate and lawful demonstrations, protests and meetings. This community facility shall thereby be fully engaged with access to the general public accorded on a basis which will minimize interruption of the work of the Government of Ontario at Queen's Park. It is the essence of these Recommendations that the function of this vital public centre in the Province remain available to the public to express peacefully views on any and all issues of the day which may be raised in public demonstrations, protests or gatherings, all without limitation or hindrance except as may

be necessary to preserve peace and order and the avoidance of injury to persons or damage to property or interference with the functioning of the Government of Ontario.

Recommendation 1:

General Recommendations Relating to the Policing of Queen's Park

135. Two police forces on the same field, in close contact, face considerable problems, including the crucial need for unified planning and execution under one commander. There are many other such difficulties in the two-force system which are solved by the involvement of a single police force in the area.

136. It is recommended that the OPP shall no longer be involved in providing police services at Queen's Park. It is further recommended that these police services be provided by Metro. These arrangements are not recommended by reason of any incompetence or lack of qualifications in the OPP or by reason of any occurrence such as that of 18 March. On the contrary, the OPP itself made such a proposal to the Government of Ontario before this Commission of Inquiry was appointed. A Superintendent and Regional Commander of the OPP repeated that proposal in testimony before the Commission. This recommendation is made for the following reasons:

- (a) The OPP, in its police structure, is not designed nor deployed to provide police services at Queen's Park. As presently deployed across the Province, it primarily performs policing duties in municipalities and unorganized territory where local police forces have not been organized, and on provincial highways outside the boundaries of municipalities which have their own municipal police forces.
- (b) Metro's policing jurisdiction completely surrounds Queen's Park in the Municipality of Metropolitan Toronto.
- (c) Metro has wide experience in large-scale crowd control, in labour strikes and lockouts, and similar incidents occurring regularly at Queen's Park.
- (d) Metro is a large, well equipped and trained police force with extensive resources in the immediate area. The personnel include officers who have received specialized training and have equipment for all policing challenges likely to be encountered at Queen's Park.

137. There should be a Memorandum of Agreement between the Municipality of Metropolitan Toronto and the Solicitor General for the provision of police services by Metro at Queen's Park. Such police services shall relate to the lands and buildings at Queen's Park and would be provided from Metro resources stationed in Metropolitan Toronto in the general vicinity of Queen's Park. At Metro's discretion, these services may be provided in part by a Queen's Park detachment or other appropriate units of Metro established in Queen's Park. If no detachment is established, Metro should assign a liaison officer to communicate with the manager of the QPS, as hereinafter defined. The cost of providing these services shall be borne as shall be specified in the aforementioned Memorandum of Understanding.

138. It is recommended that all matters relating to the technical functioning of Metro in the delivery of police services at Queen's Park be left to Metro, which shall make such adaptations and provisions in its organization and procedures as will facilitate the policing of Queen's Park. This would be done through Metro 52 Division or such other facilities and arrangements as Metro shall determine. The carrying of weapons, the establishment of facilities, and the acquisition of equipment for the conduct of these services shall be determined by Metro, excepting only that the Speaker shall be consulted by Metro concerning the deployment of officers and carrying of weapons by the police in the normal course within the Legislative Chamber.

139. Notwithstanding paragraph 167 above, the OPP shall continue to provide security services to the Lieutenant Governor, the Premier, Members of the Cabinet, and any other MPPs who may require such services.

140. The policing of the regular demonstrations, rallies and protests at Queen's Park shall be undertaken by Metro as part of its police responsibility at Queen's Park. Metro shall co-ordinate the appropriate involvement of QPS for the recording of all requests or notices relating to such proposed events and shall co-ordinate the building security role of QPS with the policing operations of Metro. (See also Recommendation 9.)

141. Any specialized training that may be required to acquaint Metro and particularly its senior officers with the unique character and layout of the provincial Legislature sitting at Queen's Park, the location of important offices for the Premier and Cabinet Ministers, and the many provincial government offices and agencies with whom Metro will be working, as the police force at Queen's Park shall be undertaken by Metro in consultation with the Speaker. The physical layout of communications facilities, garages, access points, the tunnel system, and endless other considerations so familiar to the officers of OPP should be included in the training of senior and other officers of Metro.

142. It is recommended that all uniforms and equipment worn by a police officer on duty at Queen's Park shall display with reasonable prominence the service number of the police officer and/or where appropriate the name of the police officer so that the general public will know or be able to determine the identity of the police officer.

Recommendation 2:

The Speaker and the Office of the Speaker

143. It is recommended that the Order-in-Council of 1992, insofar as it placed the Legislative Precinct under the control of the Speaker for security purposes be repealed and all memoranda of understanding and agreements between the Speaker and the Solicitor General implementing these arrangements be cancelled and replaced by the following security and policing arrangements:

- (a) The delivery of security services to the Queen's Park Complex should be reorganized under the name "Queen's Park Security" ("QPS"). The Queen's Park Complex for the purposes of these Recommendations is that part of Queen's Park shown on the map opposite. It includes the buildings generally referred to as the seat of government of the Province of Ontario. The buildings in the Queen's Park Complex are all connected by underground tunnels. Consequently, the Legislative Chamber, located in the Legislative Building, can be accessed from all of the principal buildings in the Queen's Park Complex. The QPS is to be a stand alone security service separate and apart from the OGPS. No recommendations are made with respect to the OGPS in the balance of the Province.
- (b) QPS would be under the direction of the Solicitor General, except as hereinafter provided, or such other department or agency of the Crown as may from time to time be designated.
- (c) The members of QPS engaged in providing security services to the Legislative Chamber shall be designated as a separate unit or section of QPS. This section of the QPS shall be in the charge of the overall manager or director of the QPS who shall take direction from the Speaker in all matters relating to security in the Legislative Chamber. In all other

security operations in the Queen's Park Complex, the manager of QPS shall be under the direct supervision of the Solicitor General in the same manner and fashion as the OPP, which is to say to ensure independence and neutrality. The manager or director of the QPS should have an extensive police background including training and experience in crowd management and/or public order. The size of the section of the QPS devoted to the provision of security services to the Legislative Chamber shall be determined by the Solicitor General in consultation with the Speaker. There should be special training of the QPS in parliamentary procedures and traditions.

- (d) The members of QPS should be:
 - (i) employees of the Crown;
 - (ii) sworn in as "Special Constables" under the *Police Services Act*; and
 - (iii) not subject to the *Labour Relations Act*.
- (e) By reasons of their duties in the Legislative Chamber and the buildings in the Queen's Park Complex, the members of the QPS should not have the right to strike, but should have the right to form an employees' association for the purpose of representing QPS members in any negotiations with the Government of Ontario concerning compensation and working conditions. This status would remove any issue of conflict of interest arising in QPS members working in the Queen's Park Complex in the event of a strike by a Crown employees' bargaining unit, which was the subject of much discussion before this Inquiry with respect to the strike of 1996 by OPSEU.
- (f) The foregoing recommendation has no application to the arrangements for security in any other buildings or property of the Province of Ontario situate outside the Queen's Park Complex, which are the buildings interconnected by tunnel or otherwise at present and any that become so interconnected in future.
- (g) Policing would be performed as set out in Recommendation 1.

Recommendation 3:

Nature of Security Service to be Provided in the Queen's Park Complex

144. QPS shall provide:

- (a) watchmen and surveillance patrol;
- (b) registration of visitors where appropriate in the Queen's Park Complex;
- (c) general monitoring of the behaviour of members of public inside the Queen's Park Complex;
- (d) such other security services as the Solicitor General may require; and
- (e) such other security services in the Legislative Chamber as may be determined by the Solicitor General after consultation with the Speaker.

145. QPS shall establish appropriate arrangements with Metro to call for police assistance as required, in the same manner as comparable security services would be called upon to do in the private sector but also bearing in mind the unique features and requirements of the Legislative Assembly.

146. Where required in the course of an incident at Queen's Park, Metro shall, so long as deemed necessary by Metro, direct the co-ordinated policing and security operations in all of the Queen's Park Complex, including the Legislative Chamber.

Recommendation 4:

Modifications to the Property and Grounds of Queen's Park to facilitate Public Demonstrations and Other Assemblies

147. Public gatherings at Queen's Park frequently attract large crowds. There is a rising interest in public protest and demonstrations generally, here and elsewhere in Canada and the world, with an attendant increasing tendency toward violence and property destruction in the course of these events.

148. The suitability of the Queen's Park lands for public demonstrations by groups or individuals who wish to make public their viewpoint on all manner of subjects and matters is open to question. The strategic location of Queen's Park in Metropolitan Toronto and the extensive open areas at Queen's Park attract these demonstrations. It is not coincidental that the media can provide instant coverage of events in that area and can relay that coverage throughout the city, the Province, and the nation. It may well be that persons trained in this subject would propose a site within Queen's Park other than the main entrance to the building located on the south side. No such evidence was presented at the hearings. While it is apparent that less interruption of the work of government in the Legislative Building would be caused by moving these affairs to the north lawn, for example, it is unlikely that this traditional meeting, rally, and protest centre will be relocated and no such proposal was advanced in the public hearings held at the Inquiry.

149. Accordingly, it is recommended that qualified architects and engineers, and other consultants if necessary, be engaged by the Province to examine and assess the alterations for improved facilities and appropriate security in the Queen's Park Complex. The items to be examined or considered would include at least the following:

- (a) Television surveillance inside and outside the building. This may entail the engagement of experts in telecommunications and explosive detection;
- (b) The need for temporary or emergency quarters for the placing of police reserves for large-scale demonstrations;
- (c) A communications centre in an appropriate, accessible site for instant and continuous communication between police and security forces at Queen's Park and 52 Division, Headquarters of Metro or alternative venues, by radio, cellular phones, and permanent protected land lines.
- (d) Protection of ground floor windows and doors;

- (e) Wrought iron or other functional but ornamental metal fencing, not unlike Osgoode Hall, in front of the two sets of doors at the south entrance, so as to allow the grounds adjacent to the Legislative Building to be closed before or after demonstrations, or perhaps during a demonstration in order to quell or contain a serious disturbance.
- (f) Consideration should be given to appropriate lighting, special warning or safety devices, traffic control equipment, and crowd control equipment including permanently installed loudspeaker system along the south entrance to the building and in areas of the south lawn.

150. The decorative or historic quality of the buildings in the Queen's Park Complex, particularly the Legislative Building, should not be unnecessarily sacrificed to the interests of security. For this purpose, the experts mentioned above would be directed to consider this aspect of protecting the public property without destroying the historic nature and architecture of these buildings. A fortress appearance is not required for adequate security of the buildings, the staff working in the buildings, or for the protection of the persons parading or demonstrating on the land surrounding these buildings.

151. All these arrangements should be established so as to avoid undue interference with access by MPPs and staff.

152. Where such installations and alterations may affect the Legislative Chamber or its operations, the Speaker should be consulted.

Recommendation 5:

Applicable Laws

153. Submissions were received in the course of the Inquiry to the effect that present instructions and guidelines for the policing of labour relations proceedings are not adequate to these times and conditions. The essence of the plea was that the law must be enforced and obeyed in all fields of endeavour. The difficult task is to find a mode of enforcement that is efficient and fair, does not interfere with the police officer's neutrality and

impartiality and permit the flexibility in the procedures necessary to accommodate the changing needs and customs of the community, particularly in the field of labour relations.

154. The Solicitor General published guidelines with reference to the *Police Services Act* and policing in general in November, 1995. The guideline which would have been of the greatest assistance in the circumstances existing at Queen's Park on 18 March 1996 is the requirement that the police force should designate an officer to be responsible for co-ordinating and implementing the guideline procedures by all parties to the labour proceedings. Under that provision, the directive goes on to require that such a liaison officer contact both the employer and the union and advise those parties of "the distinctions between lawful picketing and activities which may constitute an offense under the *Criminal Code* or other legislation."

155. Finally, the guideline specifies a number of activities in which picketers may not lawfully engage. These prohibitions include "limiting access to and exit from the premises struck or blocking roadways that lead to the premises." The catalogue of prohibitions is followed by the statement that "In summary, picketing that blocks or obstructs access to the struck premises is unlawful and has never been condoned by the courts." The essence of lawful picketing is the right it represents to communicate information but not to prohibit access to the lands and premises of others or by false imprisonment to force others to listen to the views of the picketers.

156. It is recommended that with respect to the Queen's Park Complex a separate and special addendum to policing guidelines be added to the effect that the police through the exercise of their policing discretion will, as and when necessary, assure the access of MPPs to the Legislative Assembly. The guideline would expressly specify that when an MPP is denied access, the role of the police is to assist the MPP in obtaining access. The police liaison officer would be instructed to make that clear to the picket line, provide the picketers with an opportunity to comply and let the picketers know in clear and understandable terms the consequences of non-compliance. In this way the special nature of the Legislative Assembly is recognized with minimal impact on the balance between the employer and the employee in labour relations. In cases of flagrant breach, the police may use their power to arrest.

157. As a matter of background, the guidelines for police lay out a process for the application of the law relating to picketing and demonstrations as it exists at present. Forewarning by police to persons blocking or attempting to block access to the buildings in the Queen's Park Complex should include the information that if the entrance-way be, for all practical purposes, blocked, arrests will be made to restore immediate access.

158. To leave no doubt in the minds of the public about the critical importance of the legislature in democratic government, we repeat here the opening paragraph in the Summary, earlier in this report. The Commission wishes to state one fundamental truth as plainly and as forcefully as possible at the very outset of this report. No one has the right to impede the access of an MPP seeking to enter the Legislature to represent his or her constituency, be it by picket line, demonstration or otherwise. It is simply wrong to do so and breaches an important principle highly valued in our democratic system. The attempt to do this was the original sin from which all other transgressions that occurred in this matter flowed. The fact that this Commission is critical of the actions of a number of other parties does not mean and should not be taken as meaning that the Commission condones this wrong. Whether it was the result of original intent (which the Commission does not consider to be the case), or a foreseeable risk taken heedless of the outcome does not alter the wrong or its gravity. The fact is that here the blockage did occur as a result of the actions taken by the picketers which were wrong.

159. In the result, these measures taken to restore access and keep these buildings open will not impact on the always-present need in this branch of the law to maintain the balance of the right of persons seeking access and the rights and obligations of a picketer or demonstrator.

160. The making of arrests when necessary to maintain access is a fair and proper way to apply the law quickly and fairly. The maintenance of access is particularly important in these circumstances in order to maintain continuity of function of the process of government. Democracy is a sensitive institution and the foregoing principles of law recognize the need to protect it. The constant preparedness of the police to bring the law home to the public at the same time reiterates the police warning of the response which will follow if the entrances to these buildings, particularly the Legislative Building, are effectively closed.

Recommendation 6:

Future Arrests

161. It has been noted, that in the last three serious outbursts and demonstrations at Queen's Park, in which damage was been done and sometimes personal injuries suffered, the police made, in all, about four arrests. Having regard to the number of persons present and the extent of the damages inflicted, this may lead to complaints and a

misconception as to the intent and responsibilities of the police relating to the enforcement of the law.

162. It is therefore recommended that, where feasible in all the circumstances, arrests should be made of persons in the act of or threatening violence toward person or property in the course of a protest, a demonstration or other gatherings at Queen's Park. Designated officers or agents of the police have in the past been directed to collect evidence, photographic and otherwise, of such misconduct for use in making arrests subsequent to the incident and it is recommended that this practice be continued. There are often circumstances in which it may be physically difficult to effect an arrest. In other circumstances an arrest or an attempt to arrest on the spot may escalate the level of violence.

163. The assignment of fault and responsibility if the persons involved in such altercations is brought home to the public by effective policing, including the making of arrests when and where appropriate and these avenues should be pursued. This being a matter of police technique, the actual method adopted by the police officer on any such occasion shall be for the police officer at the scene to determine. In all these matters the level of force permissible is determined by the applicable law.

Recommendation 7:

Injunctions With Respect to Access to the Legislative Assembly

164. Failure on the part of the authorities to seek an injunction in advance of 18 March 1996 was a critical factor in the disorder that occurred on the day. Also it took a long time on the day to obtain the injunction due in part to the consideration of the applicability of s. 102 of the *Courts of Justice Act* to the Legislative Assembly. As there can be no issue that anyone has the right to impede MPPs when they are seeking to enter the Legislative Chamber and an injunction is or should be the preferred method to avoid disorder, the Commission recommends that there be legislation enacted to clarify the unique character of the Legislative Assembly in this regard.

165. This legislation would provide that where it is shown on application by any competent authority that there is actual or threatened interference with access to the Legislative Assembly, a court of competent jurisdiction may direct by injunction or other

order that there be free access without interference to the Legislative Assembly through the Queen's Park Complex. For complete clarity, the Legislature may wish to declare that any such relief would be available, notwithstanding any other statute or law. If deemed necessary, and appropriate grounds are demonstrated, the order may be granted on an *ex parte* basis with provision for the earliest possible return date.

Recommendation 8:

Piggybacking by Habitual Troublemakers on Legitimate Picket Lines and Public Demonstrations

166. The evidence before this Inquiry indicates the existence in these events of a practice connected to demonstrations at Queen's Park and elsewhere sometimes referred to as "piggybacking" or "hijacking". Evidence introduced by police witnesses and others is that these groups regularly participate in demonstrations and protests organized by others. The presence of troublemakers well known to the police is revealed by photographs and TV recordings in the evidence. These persons do not share the cause or objects of other groups but rather wish to appropriate the crowd pressure and action for their own ends and purposes. It is therefore recommended that police engaged in operations at Queen's Park should, where appropriate, assemble photographs and TV recordings of crowds where the known promoters of public disorder are shown to be present. Where appropriate in the enforcement of the law, the police should take appropriate action to protect labour picket lines, demonstrations and protestors from infiltration by interlopers whose purposes and objects are not shared by the picketers, demonstrators, or convenors of public gatherings at Queen's Park. The testimony of Metro officers before this Inquiry recounted specific incidents where the police isolated some of these persons, advised the union of their presence, and asked the persons in question to move along. What should be done by the convenors to reduce the influence of these people is difficult to determine. This information should, when the police deem appropriate, be disclosed to the convenors in advance of the demonstration to allow discussion as between the police and convenor as to the best method of anticipating and dealing with the potential for disruption. The furthest this Inquiry can go in its recommendation, therefore, is that police cooperation with the convenors or managers of the demonstration or protest in question, in the manner outlined above, should be continued. At best, the convenors of these events can, with the help of the police, discourage continued attendance of the troublemakers.

Recommendation 9:

Scheduling Special Demonstrations, Protests, General Meetings and Other Events at Queen's Park

167. The conduct of protests, demonstrations, and meetings general at Queen's Park, crowd-attracting as they are, have established an historic convention not easily displaced in this Province. Indeed, the south lawn has become a huge geographical expansion of the ancient concept of Speaker's Corner at Hyde Park in London, England. There are many arguments against continuing this convention, but none sufficiently controlling to adopt here.

168. Anticipating that the reorganization of security services in the Queen's Park Complex and the installation of Metro as the sole source of policing services at Queen's Park may be implemented as recommended, it will then be necessary to install a system for the utilization of Queen's Park for special meetings, demonstrations, and events. It is recommended that the programming of these events should be arranged on the following basis:

- (a) No permit should be required for the exercise of the right of freedom of expression of freedom of association on the south lawn at Queen's Park by the populace at large. As a practice, what is required is a time reservation so as to avoid overlapping or conflict of events. It is therefore recommended that QPS should be the recorder of all such reservations and the link between the public utilization of these premises and the policing, security and other authorities engaged in the overseeing of such events.
- (b) Future management of the use of Queen's Park should include action by the QPS to apprise the convenors of the nature of the Legislative Buildings and business carried on in the Queen's Park complex. The QPS shall obtain an undertaking on behalf of the responsible convenors to maintain a level of control of their members and perhaps also inform the convenors of their potential liability for damage occasioned.
- (c) The convenor of the meetings or demonstrations should request a reservation of the precise time to be allotted at Queen's Park, specify any special equipment or arrangements which may be required, and generally give to the QPS.

- (i) A description of the organizing entity and the names, addresses, and telephone numbers of the leaders of such organizations.
 - (ii) A general outline of the event and the time to be taken at Queen's Park.
- (d) Where major events are planned, this information will include a description of how the convening organization proposes to work with the police during the conduct of the demonstration. In return, QPS shall deliver to the convenors or managers of the proposed event a simple set of guidelines for the conduct of events in question at Queen's Park.
- (e) The south lawn of Queen's Park shall continue to be available for the conduct of peaceful demonstrations, protests and meetings.
- (f) The schedule for meetings shall be under the supervision of the QPS, as outlined above.
- (g) Such facilities as may reasonably accommodate such meetings, such as loudspeakers, should be available on a permanent basis to those organizations who have made prior reservations and other arrangements with QPS.

Recommendation 10:

Relationship between the Court, the Speaker and the Executive Branch

169. The record before this Inquiry indicates a strong probability that had the participating branches of the government of the state been fully co-ordinated in the build-up to and during the conduct of the events of 18 March, court intervention would have been brought about by the appropriate applications for injunction and other relief, some of the serious consequences of these events would have been avoided. It is therefore recommended that the Speaker and the Executive Branch should, as their respective interests require, co-operate and make timely application to the courts for injunction or other appropriate relief in order to protect the interests of the public in the continuous

operation of the Legislature and to protect property and persons at Queen's Park from damage and injury.

Recommendation 11:

Authority of Ontario Realty Corporation (ORC) and the Speaker Regarding Building Maintenance

170. It would appear from the evidence that the Office of the Assembly and the Board of Internal Economy and other aspects of the Speaker's managerial operations may represent a significant duplication of expense and effort already incurred by ORC as the owner and manager of the lands and premises of the Government of Ontario at Queen's Park. Accordingly, it is recommended that the responsibility of the Speaker for the operation and maintenance of the physical accommodation of the Legislature shall be terminated and that the balance of the operations under the Speaker be reviewed for the elimination of duplication.

Recommendation 12:

Right of Access of General Public to Galleries

171. It is recommended that the public gallery be continued, but supported by a special or dedicated access, if feasible to facilitate the ready availability of these facilities to the general public wishing to attend the sessions of the Legislature. This direct public access should be maintained, free and clear of any and all obstruction, whether or not there be a picket line or demonstration in or around Queen's Park and access for the public should be specifically addressed in the planning process. It may be that this higher public policy could be served if the *Legislative Assembly Act* were amended to this effect.

Recommendation 13:

Planning

172. It is recommended that there be put in place a regular planning structure including representatives of the Attorney-General, the Solicitor General, MBS (or other appropriate members of the Executive Council) the Speaker, the caucuses of the Legislature, QPS, and Metro, ORC. This planning structure should operate as a permanent liaison committee for police and security at Queen's Park and planning for all demonstrations, protests, picketing and other public events and for the policing thereof.

Recommendation 14:

Adjournment of the Legislature When Necessary

173. The standing orders of the Legislature should be reviewed to consider whether to authorize the Speaker to meet with House Leaders, and to thereafter adjourn the House where access by Members is impeded or where their access and egress is subjected to such conditions as make the operations of the House difficult. This was raised as a difficulty that there was issue taken as to the ability of the Speaker to adjourn the House in these circumstances. Accordingly, it is recommended that the Assembly consider adopting such revision to their rules of procedure as may be necessary to allow either the Assembly itself

or the Speaker as its agent, to make such arrangements for the adjournment of the House as may be necessary or advisable to deal with the similar circumstances in the future.

General Comments on these Recommendations

174. It has not been a part of our lives in Ontario to experience conflicts between police and groups of citizens. Great efforts have been made in the past to maintain harmonious relationships between the policing agencies and the community. This has been reflected on the one side by the exercise of moderation by the policing agencies and a comparable restraint in the reaction of the populace. The history of labour relations in this province is a story of reducing resort to force and violence on all sides and an increase in efforts made in the direction of conciliation or mediation of issues arising between the contending parties. The adversarial concept has gradually drained away from a large part of labour relations in the commercial/industry establishment. It is to be hoped that the same trend will develop in demonstrations and protests at Queen's Park.

175. The political orientation of the community in its attitude to government appears to produce more direct intervention or participation by the citizen than heretofore in our history. It is not easy to understand the resort to physical measures in a community steeped in the tradition of governing by secret ballot, the selection of governing representatives by the public, freedom of expression and assembly, and all the other safety valves built into our system of community rule. Nonetheless, the reality is that the tendency to resort to violence, thankfully in modest magnitude thus far, seems to be ever present and not too far beneath the surface.

176. As in all other aspects of a free society, we must continually adapt and retune our modes of responding to or controlling demonstrations and protests by members of the community. It is hoped that these Recommendations will meet these needs and restrict the temptation to resort to violence.

APPENDIX A

AUTHORITY AND JURISDICTION

1. This Inquiry was commissioned by the Lieutenant-Governor's Order-in-Council (a copy of which is attached to these Appendices as Schedule F(1)), upon the recommendation of the Attorney General of Ontario. Under the *Public Inquiries Act*, R.S.O. 1990, c. P.41, the Commission had wide ranging powers to summon and examine witnesses and documents so as to fully inquire into the events of 18 March 1996, and the circumstances leading up to them. The Commission for the most part did not have to call upon these powers, as all interested parties were very co-operative and forthcoming with documents, witnesses and argument, which was much appreciated by the Commission.

2. Counsel for the Speaker's Office submitted at the outset of the hearings that witnesses affiliated with the Speaker's Office appeared of their own free will, and were not bound by the terms or the powers of the Commission, or the *Public Inquiries Act* generally. Ultimately, four witnesses from the Speaker's Office, including the Speaker, the Clerk of the House and the Sergeant-at-Arms gave testimony before the Commission. The fourth witness was called by counsel for the Speaker. The issue of the compellability of the Speaker therefore did not and does not arise. This is doubtless because the Speaker recognized that it was the will of the Legislature that all matters including the conduct of the Speaker's Office be reviewed by this Commission in accordance with the Terms of Reference.

3. In argument, counsel for the Speaker submitted that the Commission had no jurisdiction either to "impeach or question decisions made by the Speaker and his officials in the exercise of the House's established privileges with regard to security matters"; or to "offer recommendations that are inconsistent with the fundamental right of the House to control its own affairs in this area". The argument was based on the immunity of the Legislative Branch of government from review by another branch of government, in this case, the executive. The Commission is not persuaded by these submissions. The authorities proffered by the Speaker relate to compellability which is not in issue here. This Commission was tasked to inquire and to report to the Attorney General. As suggested by the authors Anthony and Lucas, in their text, *A Handbook on the Conduct of Public Inquiries in Canada* (Butterworths, 1985), this Commission makes no decisions, and hence does not "review" in any binding way the conduct of another branch of government. The Commission refers in part to the conclusion of the Ontario Court of Appeal in *Starr v. Ontario (Commissioner of Inquiry)* (1990), 71 O.R. (2d) 161, that the commissioner of a public inquiry reports and recommends; he or she does not order. The recommendations may be formulated into a Bill and put before the Legislative Assembly for consideration or they may not.

4. The Commission notes that findings and recommendations of a Commission which relate to or criticize another branch of government are not without precedent. The Speaker sought to rely on the decision of the Supreme Court of Canada in *MacKeigan v. Hickman*, [1989] 2 S.C.R. 796, with respect to the Marshall Inquiry. The Commission established to look into matters concerning the prosecution of Donald Marshall, Jr. was specifically found unable to compel members of the judiciary to testify. As noted above, that issue does not arise in this instance. Nonetheless, that Commission made findings, in its *Report of the Royal Commission on the Donald Marshall, Jr., Prosecution* (December, 1989), which were critical of the Nova Scotia Court of Appeal, and made recommendations which related to the structure and conduct of that Court.

5. The Commission therefore does not consider itself constrained by the arguments of the Speaker, and gives this report in recognition of this.

6. The Government of Ontario and OPSEU united in the submission in reply to the Speaker that if indeed there were originally the power in the Speaker to object or claim an immunity then that immunity from review had been waived by the attendance of the witnesses and the full participation throughout of the Speaker through counsel by way of cross-examination of the witnesses, oral submissions on various issues of substance and procedure and generally participation in the hearing as a full party. If it were necessary to do so, the Commission accepts that the position advanced by the Government of Ontario and OPSEU would provide a further and alternate basis for refusing to accede to the submissions of the Speaker in this regard.

7. The Commission further takes comfort from the submissions of the Government of Ontario and OPSEU citing passages from the proceedings of the Legislative Assembly that make manifest that the three major parties wanted a broad ranging inquiry including consideration of the conduct of the Speaker's Office. It is absolutely clear that the will of the Legislative Assembly, as reiterated by Mr. Cooke, an NDP MPP who testified, is reflected in the full Terms of Reference and the Commission has addressed the scope of those Terms of Reference in their entirety. The Speaker has taken the technical position that there was not a unanimous resolution of the House. Again, based on the submissions of the Government of Ontario and OPSEU, were it necessary to do so, the Commission considers that the substance as opposed to the form of the expression of the will of the House provides a further alternate basis for refusing to accede to the submissions of the Speaker in this regard.

APPENDIX B(1)

DETAILED CHRONOLOGY

1. The following appendix is intended to provide the reader with a more complete picture of the events which preceded 18 March 1996, and the events of the day itself, as well as commentary on the events. For ease of reference, a point-form chronology is also provided to give an overview of events. This chronology also includes matters referred to in other sections of the report or the appendices. The roles of individual actors during the course of the days events are further explored and considered in the various subsections of Appendix D.

(1) EVENTS PRIOR TO 18 March 1996

2. On 25 July, 1988, a report was produced on the Present Security Environment at Queen's Park.

3. On 29 August, 1988, a Memorandum of Understanding ("MOU") was signed by the Minister of Government Services and the Speaker of the Legislative Assembly, relating to a variety of services, not including security. This MOU defined the "Legislative Precinct" as the whole Legislative Building; the Legislative Grounds bound by Wellesley Street to the north and Queen's Park Crescent to the east, south and west; and the first and second floors of the Whitney Block.

4. In April, 1990, by Order-in-Council #957/90, the Speaker was given control of the Legislative Precinct as defined in the 1988 MOU, under the *Legislative Assembly Act*.

5. On 19 October, 1992, the 1990 MOU was updated. As part of this update, the Legislative Precinct was expanded to include the tunnel connecting the Legislative Building to the Whitney Block, and the first, second and third floors and "part of the basement" of the Whitney Block. Curiously, no Order-in-Council was made to reflect or adopt this change in the definition, but rather it appears to have been assumed that the 1990 Order-in-Council allowed for amendments to the definition of the Legislative Precinct. This absence is particularly odd, given that the Speaker, under the *Legislative Assembly Act*, R.S.O. 1990, c. L.10, has control over only the Legislative Chamber and those parts of the Legislative Building designated by the Lieutenant Governor in Council.

6. On 30 November, 1992, the then Speaker of the Legislative Assembly, the Hon. David Warner, signed another MOU with the Solicitor General for the provision of security services for Members, staff and visitors of the Legislative Assembly, and for security to the Legislative Precinct. This work was performed by members of the OPP

and OGPS. The MOU noted specifically that the *Legislative Assembly Act* gives the Speaker authority to establish security guidelines for the Legislative Chamber and other parts of the Legislative Building under his control. Security guidelines under the *Legislative Assembly Act* were established by Speaker Warner in May of 1993. In November of that year, an addendum was added to clarify some aspects of the 1992 security MOU.

7. As part of the legislative background to the events, on December 11, 1993, the NDP government's Bill 117, An Act to Revise the Crown Employees Collective Bargaining Act (CECBA) was enacted. This legislation, among other aspects, gave crown employees the right to strike.

8. Moving forward to June of 1995, Ontario voters went to the polls, and elected a new government, comprised of the Progressive Conservative Party, with the Rt. Hon. Michael Harris as Premier.

9. During the summer of 1995, the OPP detachment at Queen's Park was considering how best to approach security at Queen's Park. To this end, a report was produced in July, entitled "A Strategic Approach to Queen's Park Services". Pursuant to this report, Inspector Jay Hope of the OPP, then in command of the OPP detachment, presented proposed amendments to the MOU to the Speaker's Office. The OPP apparently received no response to these proposals, and no amendments to the MOU were effected. In September of that year, Inspector Hope moved from his position at Queen's Park to OPP Regional Command in Aurora. Inspector Hope continued to liaise with Staff Sergeant Hough, the LSS Manager, who was now the senior OPP officer in the Legislative Precinct, particularly for special occasions or expected incidents, but was not involved in daily operations at Queen's Park.

September, 1995

10. On 26 September, 1995, the House elected a new Speaker, the Hon. Allan MacLean. The following day, 27 September, the Legislature of Ontario commenced its first sittings after the election. The House opened with the reading of the Speech from the Throne by the Lieutenant Governor. This event attracted a variety of groups and individuals to the grounds outside the Legislative Assembly Building to protest and demonstrate against the policies of the government.

11. The demonstration, which had commenced peacefully, turned ugly in a short space of time. Members of the crowd rushed the temporary barricades which had been established on the pavement in front of the steps leading to the doors of the south entrance of the Legislative Building. The crowd broke the line of barricades, and pushed them forward. The end result was that Metro officers who had been supervising the crowd were pushed back up the stairs, and into the south doorway. A stand-off then ensued for over

an hour, in which the protestors attempted to storm the building, and Metro officers physically restrained and were in combat with the crowd. During these events, a number of police officers were assaulted by members of the crowd, and the police officers used their batons to hold the crowd back, with resulting injuries on both sides. It was, by all accounts, a very serious incident.

12. As a result of this incident, on 5 October, 1995, the Speaker of the House requested the creation of an all-party Legislative Committee to look into matters of security at the Legislative Assembly. This Committee worked through the end of 1995 and the beginning of 1996 to deliver to the Speaker its report. Sadly, the events of 18 March 1996, took place before the Committee was able to complete and table their report. The report was tabled on 20 March, 1996, and was subsequently adopted unanimously by the House on 18 April, 1996. The Commission heard evidence that implementation of the recommendations contained in the report is being postponed at least to some degree to await the findings of this Commission.

13. During the final months of 1995 and into 1996, members of the Speaker's Office, the Government of Ontario, OPSEU, the OPP and Metro were becoming increasingly aware of the possibility of an OPSEU strike.

14. On November 10, 1995, the legislature enacted the government's Bill 7, entitled "An Act to Restore Balance and Stability to Labour Relations and to Promote Economic Prosperity and to make Consequential Changes to Statutes Concerning Labour Relations". This Act reversed several of the policy changes in labour relations which had been instituted under the previous New Democratic Party government. Among other things, it removed the earlier prohibition against replacement workers, and addressed issues of how former public sector labour representation would continue in the wake of anticipated privatization. Skipping forward a few months, after considerable public and legislative controversy, the government's so-called "Omnibus Bill", Bill 26, entitled "An Act to Achieve Fiscal Savings and to Promote Economic Prosperity through Public Sector Restructuring, Streamlining and Efficiency and to Implement Other Aspects of the Government's Economic Agenda" received third reading on January 29, 1996, the last day that the Legislature sat before reconvening on 18 March. This broad-reaching Act also had significant ramifications with respect to public sector workers. These Acts in part provided some of the labour relations background to late 1995 and early 1996.

15. As early as September, 1995, the Speaker's Office and the Government of Ontario were holding meetings to discuss the eventuality of a strike, from the point of view of building services, facilities and strike response. Toward the end of 1995, OPSEU began passing information to its members with respect to collective bargaining, government offers and the potential for strike action. This was followed with more specific information in January and February of 1996, including educational seminars and courses for its members and local presidents. In the meantime, OPSEU was attempting to

negotiate a collective agreement with the government, represented by the Management Board of Cabinet, under the leadership of the Honourable Mr. David Johnson.

16. Concern about the effects of strike action by OPSEU on the Legislative Precinct was being felt by the Speaker's Office by the beginning of 1996. To address these concerns, the Speaker's Office retained counsel in January to start considering the question of access to the Legislature by MPPs and legislative staff. On 5 February, 1996, the OPP began to develop a security plan for the Legislative Precinct, which developed into a document which was referred to in evidence as "the SMEAC document" due to its structural format. SMEAC is an acronym for Situation, Mission, Execution, Assignments and Communication. The document included a tiered series of responses, depending on the threat encountered, and called for the presence of the CMU for the purposes of crowd management. The document was eventually approved by the Speaker on 21 February.

February, 1996

17. On 7 February, 1996, students from Ontario universities staged a demonstration at Queen's Park. Whatever may have been the original goal of the demonstrators, a violent attack evolved from what commenced as an ordinary protest demonstration. The crowd, incited or led by a few individuals, surged over the temporary barricades, and eventually smashed their way through the front door of the Legislature and into the main lobby of the building. There, they were met and halted by members of the LSS and Metro, who prevented the students from proceeding further than staging a "sit-in" in the front lobby. The demonstrators eventually withdrew, leaving others to clean up the wreckage. In the course of this invasion of the Legislative Assembly Building, considerable damage was done to the front door, the windows, the barricades, and inside the main lobby.

18. There had thus been, in September 1995 and February 1996, two serious demonstrations and outbursts at Queen's Park. Property damage and physical injury were sustained. The integrity of the Legislative Assembly Building was breached and the work of the legislators interrupted. These threats were appreciated at the time as dangerous and were seen as serious invasions of the functioning of the core and centre of the legislative and administrative operations of government in the Province. Consideration of these events imbued the planning for future demonstrations at Queen's Park.

19. OPSEU's strike vote was scheduled for 18 February, 1996. As the date approached, a number of meetings within and between the police forces were held to discuss general strike issues, and security at the Legislative Assembly Building in particular. At one meeting, held on 13 February, 1996, members of the OPP and Metro met at Queen's Park to discuss general strike management issues, and also the plan which had been drawn up by the OPP for the Legislative Precinct.

20. On 15 February, 1996, the Speaker's Office sent a memorandum to the staff and occupants of the Legislative Building, which stated that the Legislative Assembly was not a party to the labour dispute, and that in the event of a strike, the building would remain open and functioning.

21. On 18 February, 1996, the members of OPSEU voted to reject the government's bargaining proposal, and hence to go on strike. After this vote, staff members of OPSEU increased their efforts with respect to the logistical aspects of organizing the biggest strike in the history of the province.

22. On 20 February, another meeting took place between officers of the OPP and Metro, this time at Metro Headquarters at 40 College St. Again, strike planning, security plans and communication between the forces was the subject of discussion. Metro indicated an intention to establish a Strike Command Post, and there was discussion of liaison between the forces during the strike.

23. The following day, 21 February, members of the Metro Strike Planning Committee met with provincial representatives of OPSEU to discuss general issues with respect to the upcoming strike, as hundreds of OPSEU picket locations would be in the Metropolitan Toronto area.

24. An interesting development in the relationship between OPSEU and the Members of the Legislature arose on 22 February, 1996. On that day, further to earlier inquiries by members of the Liberal and NDP parties, Heather Gavin, Executive Assistant to OPSEU President Leah Casselman, sent letters to those representatives of those two caucuses. In part, the letters made it clear that "OPSEU does not intend to impede members of the Legislature who share a common goal with OPSEU members..." Unsurprisingly, a similar letter was not sent to a representative of the PC caucus. The receipt of these letters, and information concerning their contents, was not passed on to either the PC caucus, or the Sergeant-at-Arms.

25. In preparation for the strike, the Speaker's Office issued a "Bulletin for Occupants in the Legislative Precinct" on 23 February, 1996. This bulletin gave information about the strike and advised that the Legislative Precinct would remain open in the eventuality of a strike. It informed members that part of the plan for security at the Legislative Precinct was that all doors to the Legislature and the Whitney Building were to remain closed, save for the east door of the Legislative Building, and the North Door of the Whitney Building. For this reason, it will be seen that the east door became a focal point for picketing activity at the Legislative Building. The Bulletin further indicated that people working in the Legislative Precinct may be expected to wait a short period of time before entering the building. The bulletin advised that if this occurred, the staff member should "wait calmly and avoid confrontation". This bulletin was re-issued during the strike on 13 March, in substantially similar format. One notable change is that the instructions to

wait calmly before proceeding through a line where expected to do so was moved to a position of even greater prominence in the second bulletin.

26. Also on 23 February, a "General Strike" was held in the city of Hamilton, Ontario, organized by OPSEU and the OFL. For this event, Metro's POU was called out, but never deployed into the crowd. The General Strike passed without serious incident, in an atmosphere of peaceful, if vocal, protest.

27. It is against this background of labour relations involving the planning by both management and labour for negotiations and strike, if necessary, and the general unrest in the labour movement at the actions taken or proposed by the new government, that on 26 February, OPSEU began its strike against the Public Service's employer, the Government of Ontario. Picket lines were established and the strike was under way. The strike was structured in a "staggered" way, such that not all OPS employees left the job on the same day, but rather walked out on different days over the first week of the strike. Picket lines were established at strike points throughout the province and were manned by OPSEU members in growing numbers as the union organized its forces. During the initial stages of the strike, Members of the Legislature and staff of the Legislative Assembly had no difficulty gaining access to the Legislative Assembly Building. The mood on the picket lines during these early days was described to the Commission as celebratory and jubilant, rather than militant or hostile. While a demonstration of approximately 400-500 people was held at Queen's Park on the first day of the strike, it was conducted without incident. The OPP did have the CMU on site at Queen's Park during the first three days of the strike. However, they were never deployed, and did not leave the inside of the building.

28. As part of the OPSEU strike strategy, people entering a wide variety government buildings to work or otherwise were asked to respect a delay before accessing the buildings. Restrictions, including delays of access, imposed by the union were said to be authorized by a "protocol." This term, which was used by all parties to the strike, refers to an agreement, express or implied, between the employer (the Government of Ontario) on the one hand, and its employees (as represented by OPSEU) on the other. At other times delay was not imposed, or was imposed for longer than fifteen minutes.

29. As the strike progressed, tensions and anxieties mounted among OPSEU workers. More forceful picket lines became the norm for OPSEU to effectively deliver their message to the government. Pickets became stronger and more strident during this time, with the end result that a number of difficulties were experienced at OPSEU picket locations across the province. For all picket locations except those at the Legislative Assembly, OPSEU was in direct contact with the Government of Ontario, in the form of the MBS, to deal with problems on the picket lines as they arose. There was a system developed between the parties wherein their counsel would be in contact if an injunction with respect to a picket line was needed, and motions for such an injunction would typically be heard on short notice in front of one of a number of judges of the Ontario

Court (General Division) who had been made available for such a purpose. The system, while not perfect, certainly facilitated hearings and eased tensions with respect to picket line difficulties between the Government of Ontario and OPSEU. It ensured that such difficulties would be dealt with in an expeditious and timely fashion.

30. By 11 March, a 15 minute delay was being imposed by the OPSEU picket at the east door of the Legislative Assembly. Again, the term "protocol" was used to refer to this delay. However, there was no evidence of an actual expressly agreed protocol between the Legislative Assembly or its Members and OPSEU in the testimony or documentary record before the Commission. Rather, there seems merely to have been a practice of imposed delay to which those entering the building acceded for lack of viable or non-violent option.

31. The President of the OPSEU local at the Legislative Building, Don Shepard, testified that the moderate and apparently acceptable policy of modest delay was replaced by an alleged protocol, strictly enforced and sometimes with extended delay periods, by persons on the picket line who were not members of the Queen's Park local or of other locals of OPSEU. For example, the picket line included members of the Steelworkers' Union, Machinists and other unions of the OFL. Further, some episodes of complete blockage were being experienced both at the east door and at the access point to the Queen's Park tunnel system from the College Street subway station. In response, the Government of Ontario sought and obtained an injunction regarding the subway tunnel, using the system described above on or about 12 March, 1996. Despite the fact that in early to mid-March, there were a number of incidents in which conflict arose between MPPs attempting to gain access to the Legislature and picketers wishing to impose a delay, the Speaker's Office did not seek an injunction with respect to the east door at any time prior to 18 March.

32. OPSEU planning for the event of 18 March 1996 began surprisingly late in the day. The idea does not appear to have come for the fore in the minds of OPSEU organizers until 13 March, when OPSEU staff members met with representatives from the OFL, MLC and CLC. This late consideration is attributable in large part to the fact that OPSEU staff were stretched to the limit and had been extremely busy organizing the details of the strike from its first day, and their expectations that the strike would be over long before the opening of the House on 18 March. At the meeting of 13 March, the notion of a mass demonstration and picket to coincide with the re-opening of the House on 18 March was considered, and Gavin Leeb of OPSEU put forward a tentative plan to block access to the MacDonald Complex completely, and to impose and maintain a 15 minute delay at the east door of the Legislative Assembly Building. The dichotomy appears to have been based on a instinctive or visceral view on the part of OPSEU organizers that MPPs were subject to different rules, and that blockage of the Legislature could and should not be effected. Also discussed were a possible timetable for the day, and the concept of encircling the Legislature with a giant picket line, which would be expected to have great visual effect.

33. As a result of this meeting, representatives of the OFL, MLC and CLC sent flyers and faxes to their membership and their affiliates to inform them of the upcoming solidarity picket with OPSEU set for 18 March. These flyers gave general information, but did not contain any details of the plan or schedule for the day. It was further agreed that OPSEU would organize one team of security marshals under the direction of Gary Adams, and the OFL would organize another under the direction of the OFL's Bill Howes.

34. With the possibility of the strike continuing through to the date of the opening of the Legislature ever increasing, and the included likelihood that some sort of demonstration might be arranged at Queen's Park for that day, the Sergeant-at-Arms spoke with representatives of the three House caucuses on the subject of access to the House for Members. In response to his inquiries, both the Liberal and NDP caucuses responded that they did not expect any trouble with OPSEU, or with getting their Members into the House. The caucus representatives did not indicate that these expectations were the result of conversations with OPSEU, and the Heather Gavin letters of 22 February.

35. Also in the week of 11 March, a representative of the MBS contacted the Clerk of the House with an eye to co-ordinating their efforts with respect to the strike and the possible upcoming demonstration. The Clerk, true to the principled, if blinkered, approach to Legislative autonomy which was being taken by the Speaker's Office, stressed the independence of the Legislature, and concluded that there was no need to co-ordinate with the MBS.

36. On 14 March, the Clerk of the Legislature became aware of the problems which some Members were having in accessing the east door. He wrote to Don Shepherd, the President of the OPSEU Local at the Legislative Assembly and the sometime picket captain of the east door picket line, with a copy to the president of OPSEU, demanding the cessation of any and all delays or restrictions on MPPs at the access points. This was the first notice to OPSEU by the Speaker or his staff of the Speaker's assertion of the MPPs' privilege of entry into the Legislature.

37. Shepard received this letter on the evening of 14 March, and was not in to the picket line on 15 March. The most that he did with the letter was to make several photocopies of it, and bring them with him on 18 March, to hand to members of his local which he found there that day. He did not discuss the letter with OPSEU leadership.

Intelligence Received by OPP, 14 March

38. On 14 March, serious intelligence came from the OPP's Regional Intelligence Co-ordinator ("RIC"), that no-one was going to be allowed in or out of Queen's Park on 18 March, and that violence might be used to achieve that result. Given the seriousness of this intelligence, it is astounding that the two people who received the information from the RIC, Superintendent Currie and Inspector Hope of the OPP, could have received the

different versions of it that they did. Superintendent Currie's testimony was that he understood that violence was going to be used by members of "piggy-back" groups, and that this violence may have been directed event at OPSEU members. In response to this information, Superintendent Currie ensured that Inspector Hope met with Metro, who he assumed would be in contact with OPSEU. Inspector Hope, on the other hand, understood from the intelligence that violence was going to be directed at the police and MPPs only, and used by the demonstrators generally, including both the piggy-back groups and members of OPSEU. The difference in how such information might have been handled if everyone even within the OPP were on the same page could well have affected the outcome of the day. Of course, some of these observations are an exercise in hindsight. But this apparently serious information concerning the threat of violence to the police and others was in the hands of the police on 14 March.

39. Two opportunities to respond to this information were thrown away. First, the OPP failed to communicate the intelligence to the Speaker, such that he might contact the House Leaders or other caucus representatives to ensure that the seriousness of the situation was appreciated, and to elicit input as to how the elected representatives wished to react to the information. Second, the two police forces failed to apprise the union leaders, before 18 March, of the information, or of the forces that they would deploy at Queen's Park to protect the persons on those grounds from injury and to conduct the MPPs into the Legislature.

40. The Speaker at this very time was considering the possibility of an application to the Ontario Court (General Division) for an injunction restraining OPSEU, its members, and others from interfering with the access or egress of MPPs and their staff to and from the Legislative Building. The Speaker testified that he and his staff held back from making application for such an injunction because there had been no overt incident, until Monday morning, on which to base an application. The Speaker had been advised by his counsel that the novelty of the Speaker's making such an application to a superior court raised a serious risk of failure of the application in the absence of an actual interference. The knowledge of intelligence of potential use of violence may have prompted an earlier injunction application, which may in turn have avoided the resort to force which took place on 18 March.

41. Staff Sergeant Hough and Inspector Hope, in the meanwhile, had developed a general access plan for MPPs and staff members on 18 March. The plan had several levels, the first being advice to arrive before 7:00 a.m., to avoid any picket line difficulties. After that, Members and staff were asked to attend at the east door to gain access, waiting out a delay if necessary. If this were not possible, they were to report to an OPP officer located in a parking kiosk on the south-east lawn of the Legislative Building, who would assist and arrange access.

42. The crux of the plan, however, was that if the above measures did not work, the OPP would escort MPPs into the Legislature using the CMU on two different occasions: 11:00 a.m. via the south doors to the Whitney Block for PC MPPs, and 12:00 noon via the Frost Building for Liberal and NDP Members.

43. This plan was ultimately approved by the Sergeant-at-Arms, who, pursuant to a suggestion by the Clerk, contacted all three party caucuses to relay the plan to them. The Sergeant-at-Arms reported back to Inspector Hope and Staff Sergeant Hough that the PC caucus had listened to the plan and were inclined to follow it, the Liberal caucus had heard the plan, but did not expect to need or follow it, and the NDP caucus had not even cared to hear the plan. In relaying the plan, however, the Sergeant-at-Arms did not indicate that it would involve the use of the CMU, or the use of force, limiting it to co-ordination of the MPPs at the times specified, and assuring access at that time. Further, the Sergeant-at-Arms did not advise each of the caucuses that separate plans were being used for each caucus, preferring to tell each only about the plan relating to their members.

44. The PC and Liberal caucuses spent most of the rest of the day conveying the contents of the plan to its members, all of whom knew of it by the morning of 18 March.

Meeting between Metro and OPP, 15 March

45. Inspector Hope testified that in response to the intelligence information from the OPP RIC, and pursuant to a request by Regional Commander Currie, he arranged for a meeting to take place between OPP and Metro on 15 March. At that meeting were Inspector Hope, Staff Sergeant Hough and the RIC from the OPP and Superintendent Parkin, Staff Sergeant Ryan, Sergeant Muscat and Constable Glavin from Metro. Based on the evidence given at the inquiry and the notes of the meeting, it is difficult to credit that the OPP and Metro were at the same meeting. Given the importance of the meeting, and the difference between the versions of events, some reference to the evidence is appropriate.

46. Hope's version of the meeting is that:

A. As the meeting began, I led off by telling them the intelligence information that I had, that nobody was going to get into Queen's Park on March 18th, including the police, and that there was going to be violence used to achieve their ends.

I then, told them about the plan, as I have related it here earlier, with respect to essential service workers, and members of the Conservative government and members of the NDP and the Liberals.

Q. I want to make sure. Did you tell him, at that time, expressly, that you would be sending your CMU out to create a secure cordon?

A. Yes, sir, I did.

Q. For both plans, 11:00 and 12:00?

A. Yes, sir.

Q. So you had the lead in doing that, I take it?

A. Yes, sir.

Q. When I said "him", I meant all the Metro people present, including Superintendent Parkin and Ryan.

A. That's correct, sir.

Q. They were all there for that?

A. Yes, sir.

Q. All right, what happens after that?

A. After I told them what our plans were for the day, and I had obtained Metro's agreement that they would assist us -

Q. Take me through that expressly. What did you say?

A. I asked Superintendent Parkin, "Are you going to assist us?"
He said to me, "How far are you planning to go -- to the point of violence?"

I said, "I am going to use as much force as is necessary."

Then he said, "Are you going to cross the picket line?"

I said, "I am going to do what I have to do to get those MPPs in."

Then, I asked him, "Are you going to assist us?"

Q. Yes.

A. He paused and then said, "Yeah, I guess so."

47. Inspector Hope has no notes of the meeting. Staff Sergeant Hough's notes are very terse and record only what he was told about the Metro resources that would be deployed.

Superintendent Parkin gave evidence for some 21 pages in chief on what occurred at that meeting. He made notes at the meeting which do not record what was set out above. Superintendent Parkin's recollection was that Inspector Hope informed him that there was going to be a Tier 2 response which would be somewhere between very soft and Tier 3 which would probably be a full scale riot.

48. Superintendent Parkin then, with the use of his notes, recollected that the parties exchanged cell phone numbers and advised each other of the forces that they would have there on the day. They also agreed to have a liaison officer in each other's radio room. He recalls being told about an 11:00 plan for the Conservatives and a 12:00 plan for the Liberals and NDPs. He said, however, that it was agreed that Metro would be outside and the OPP would come outside if requested by Metro. Inspector Hope's evidence is that he made it clear that the CMU was coming outside to get the MPPs in.

49. Superintendent Parkin recalls being informed that the subway tunnel would be locked down for the day. Inspector Hope does not recall any discussion of the subway tunnel and says for him the subway tunnel was to be open and an important point of access. Superintendent Parkin records that it was his understanding that there was not any concrete intelligence from either Metro or the OPP with respect to threats, but thinks that in hindsight there must have been a discussion about blocking access. Superintendent Parkin testified:

I also talked about that we expect emotions to be high and, from Metro's point of view, that we would be going slow. By this, I meant that there's a lot of these people worried about their jobs, worried about their houses, and their mortgages, and their futures, and this is not the type of people that the police would have problems with on a day-to-day basis.

There are certain individuals and certain groups that we constantly have problems with, but OPSEU, I believe that this was their first strike. My officers had been dealing with them since the beginning of the strike. They weren't -- my officers weren't being threatened by them.

So other than the emotions and that my officers would be going slow, that was discussed.

50. Superintendent Parkin says that he mentioned that if violence did occur, that he would withdraw his foot patrol officers and bring in the Public Order Unit. The foot patrol would then get their helmets and come back to offer a supporting role to the Public Order Unit. He then testified as follows:

Q. And this is, I think, the note I was adverting to earlier. The subject of there being trouble getting access that day was discussed, I take it, at this meeting?

A. Oh, yes, except the OPP plan was for 11:00 and 12:00, and it was decided that not knowing what Monday was going to bring, if there was a problem, if these plans were going to prove to be unworkable, that we would have further discussions on Monday.

Q. This note says -- I can't quite read it -- "If major problems" ...

A. "If major problems with MPPs getting in, we will discuss Monday."

Q. And then what is the next note?

A. "OPP to drive MPPs into building. Wouldn't need our help."

Q. What is that about?

A. I was under the impression that the OPP had arranged various meeting points for the MPPs and, from there, they would take them into the Whitney or the Frost building.

Q. In cars?

A. Yes, cars or vans, that our help was not going to be required.

51. Inspector Hope testified that he did not recall talking about going slow, or a plan if there was violence to remove area foot and have the Metro POU look after the crowd. Inspector Hope further did not recall what Superintendent Parkin said about discussing matters further on Monday if there were major problems. Inspector Hope's view was that if there were major problems in obtaining access for the MPPs, he would get them in by using the CMU at 11:00 a.m. and 12:00 noon. Further, Inspector Hope stated that a plan to drive the MPPs into the building was not discussed at the meeting of 15 March.

52. It is perhaps not important to multiply examples of the differences. Inspector Hope and Superintendent Parkin, as the main decision makers, apparently left the meeting with very different understandings of what was to occur. It appears that Superintendent Parkin would not have agreed to a plan as proposed by Hope and as it was understood by the Sergeant-at-Arms:

A. The description of the plan, as set out here, is that the MPPs would be using their own means early on trying to get in through back doors, or

whatever, and then that they would form up at 11:00 at the south door, and then be brought in.

Q. Was that the way the plan was described to you?

A. No, sir. Looking at that plan, I would have to disagree with it.

Q. Why do you say that, sir?

A. If the concern was that the MPPs were in any type of danger, having to meet in the open would just draw attention to them. I have to assume that these OPSEU workers were well aware of the identification of the MPPs, and to have them meet in front of the building would not seem like a viable solution to me, or a viable plan.

Q. And I think we may have it. Was there any discussion at the meeting on the 15th that you were at as to this being the plan, that they would meet out in the open and come in through that door?

A. No, sir, if I had been aware of that, I would have expressed a great deal of concern immediately. I don't think that we would have been able to offer protection to members who were -- especially in large numbers if they were standing out there in front of the building.

53. Inspector Hope, after a review of Superintendent Parkin's notes and his evidence was asked this question:

Q. All right, if they were proceeding on that basis, forgetting whose understanding is good or bad, right or wrong, you weren't on the same page; correct?

A. If they were proceeding on that basis, that's correct, sir.

54. The two main security forces for 18 March 1996 - the OPP and Metro - were clearly not on the same page in terms of the plan on the Friday before the event. It is inevitable that any plan may have to be adjusted as events occur. That is normal. It is, however, a recipe for confusion if not disaster, if at the end of the planning stage the two major actors who are meant to be co-ordinating their actions are proceeding on very different understandings and premisses. Confusion on the "battle field" is perhaps understandable and inevitable. Confusion of this magnitude in the planning boardroom is not.

55. The minutes and records of the several Metro participants at that meeting concerning the OPP intelligence information are not clearly recorded. Metro apparently

did not appreciate that the intelligence included a plan for violence against police officers while escorting MPPs into the House. Of the greatest significance is the note recorded in his diary for 18 March by Staff Inspector Taverner of Metro, that "no information had been received (as of 7:15 a.m.) of any potential violence." In any case, no clear-cut plan of common defence against this reported threat was set out in the minutes of either meeting.

56. The minutes of these meetings of the police forces and meetings with representatives of the Speaker, and the correspondence between the attendees of the meetings, are devoid of any discussion about liaison with or exchange of information between OPSEU and the two police forces and the Speaker's office. Metro appeared to have the most frequent association with OPSEU. The Speaker considered that neither he nor his staff could, without prior authorization from the Legislature itself, open up or maintain any communication with OPSEU.

57. All parties, particularly OPSEU and the two police forces, spent the weekend preparing for 18 March.

APPENDIX B(2)

THE EVENTS OF 18 MARCH 1996

1. The events of 18 March 1996 at Queen's Park began at approximately 5:00 a.m. At this time, members of the OPP began to arrive at Queen's Park. A briefing of the OPP's CMU members took place in a print shop located in the basement of the Whitney Building. During this briefing, Inspector Jay Hope, the OPP Incident Commander at Queen's Park for the day, relayed the intelligence as to the potential for violence and the mission of the day to the CMU members: to ensure that MPPs were able to access the Legislative Assembly. To this end, the team was to use as much force as necessary to get Members in. During this briefing Inspector Hope also stated that the CMU was to be used as the "last resort" in ensuring member access.
2. Another preparatory briefing took place at 5:30 a.m., at OPSEU's offices on University Avenue. There, Gary Adams, who was to head up one of the OPSEU security marshal teams, briefed those marshals as to their roles and assignments for the day.
3. A third briefing took place at about 6:00 a.m., this time at Metropolitan Toronto Police Headquarters at 40 College Street. Superintendent James Parkin of the Metro Force alerted his officers to the fact that the OPP had plans to bring members into the building at 11:00 a.m. and 12:00 p.m. He stressed that the focus of the day for Metro was that it was to be a "go slow" day. Members of the CRU were to be on the scene and visible at Queen's Park during the day in soft tactical gear. If violence erupted, the CRU members were to withdraw, and the POU was to be deployed, with members of the CRU serving as backup.
4. OPSEU picketers and supporters started arriving at Queen's Park between 6:00 and 6:30 a.m., and were in sufficient numbers that at 6:26 a.m., a report came through to the ORC, a government agency which manages the Queen's Park Complex for the Government, that one of the entrances to the MacDonald Complex at 900 Bay Street was blocked by OPSEU picketers and members or supporters of the union.
5. At around 6:30 a.m., a meeting took place between Gary Adams of OPSEU, Bill Howes of the Metropolitan Toronto Labour Council, and several Metro Officers, including Staff Inspector Marlene Watson, who was the field commander of the CRU on 18 March. During that conversation several logistical details with respect to the day, including the presence of the Security Marshall Teams and the arrival of flatbed trucks to be used for the demonstration, were discussed and cell phone numbers were exchanged by members of the union and Metro officers. The labour representatives indicated that they hoped and had planned for a peaceful rally, and that they would be asserting a fifteen minute protocol

at the east door to the Legislative Building, and "stronger" picket lines at the MacDonald block. The Metro officers indicated that the Union should be aware of the possibility of non-union and potentially provocative groups being present at Queen's Park. Metro apparently did not pass on details of the discussion to the OPP.

6. Gradually, commencing with the early hours of 18 March, the congestion around the few open points of access to the government buildings increased. This culminated later in the complete (but, at times, intermittent) blockage of the only operating access point at the Legislative Assembly Building, namely the east entrance. This blockage gradually extended to similar access points at other government buildings at in the Legislative Precinct. Later, restrictions amounting at times to a complete blockade were indeed imposed at the MacDonald Complex in the Area Command.

7. At around the same time, (6:30 - 7:00 a.m.) reports to the ORC indicated that the north door of the Whitney Building was being blocked by picketers. Over the next half hour, similar reports came in from the Hepburn Block, and the north door to the Whitney Building was reported to be blocked until 2:00 p.m. The evidence was that many entrances to the Legislative Precinct were open or intended to be open (and unlocked.)

8. Another conversation between OPSEU and Metro took place at around 7:00 a.m. At that time Gavin Leeb, one of the OPSEU Strike Task Force members, saw Sergeant Lazzotte, a Metro Industrial Liaison Officer, sitting in his cruiser near the Queen's Park area. Mr. Leeb engaged Sgt. Lazzotte in conversation, and indicated that the day was to be a special one for OPSEU, and that they had plans to shut down the MacDonald Complex until 2:00 p.m. and delay entry to the Legislature for fifteen minutes. This fifteen minute delay was in place at the east door during this time, but at approximately 8:00 a.m., reports arrived that picketers were no longer allowing access to the east door.

9. At around 7:30 the OPP deployed a squad of CMU in the tunnel at the access point with the subway. There was pushing and shoving with a group of steelworkers and eventually that door was secured and closed for the day.

10. Shortly after this time, a Conservative MPP, Transportation Minister Al Palladini arrived at the east door of the Legislative Building by car. Upon leaving his car he approached the east door, but was met by a number of picketers and Security Marshals. From videotape evidence it is clear that Mr. Palladini was unable to, or concluded that he was unable to, access the Legislature by the east door. After speaking to members of the press, Mr. Palladini returned to his car, which was escorted away from the east driveway by members of the Security Marshall Team.

11. Blockage at the East Door was not continuous throughout the morning. A considerable number of people were let in after the departure of Mr. Palladini via the East Door at approximately 8:25 a.m.

12. At roughly 8:30 a.m., the OPP CMU was deployed outside the building complex for the first time. In response to requests and communication from Staff Sergeant Al Hough, Inspector Hope directed that one Emergency Response Team ("ERT") (being one half of a CMU) be deployed outside the rear entrance to the South Frost Building in order to escort a number of MPPs into the building. While reports of the event differ somewhat, it is clear that a small handful of protestors were present outside the South Frost Building, and that the CMU was deployed in hard tactical gear including helmets, batons and shields. Approximately three or four MPPs gained access to the building complex at this time. Staff Sergeant MacDonald, who led the ERT for this deployment, returned inside with his team, and reported to Staff Sergeant McElary-Downer, commander of the CMU, his impression of the scene outside, which he encapsulated in the phrase "It's nuts out there".

13. Approximately fifteen minutes later, (8:45 a.m.) a second deployment of the Crowd Management Unit took place outside the rear entrance of the South Frost Building. By this time there were approximately ten to fifteen protestors at this location, and two ERTs or 32 CMU members, were deployed to create a cordon. Again, three or four MPPs gained access to the building complex. During this deployment, Staff Sergeant McElary-Downer reported that one of the protestors at that scene charged towards one of the members of the CMU with a picket sign raised in a menacing manner above his head. This picketer was apparently controlled by one of the CMU members using a shield. In addition, at the time of this deployment, there were reports of one of the OPP undercover officers, wearing a red baseball cap, physically running into protestors in order to move them aside for the MPPs. A different version of this deployment was offered by a Metro officer who was very concerned by the actions of the CMU.

14. A third deployment of the Crowd Management Unit was planned approximately fifteen minutes later, at 9:00 a.m.. However, shortly before the deployment was to take place, Staff Inspector Watson and Sergeant Danny Pearson, a platoon commander of Metro's CRU, sought to and did speak with Inspector Hope. During this conversation, the Metro officers expressed their concerns about the behaviour of the undercover officer with the red baseball cap, and the deployment of the CMU outside the buildings. They suggested to Inspector Hope that they might attempt to assist the access of a number of MPPs who were approaching the building by a different tactic, a suggestion to which Inspector Hope acceded. The Metro officers left the building, and requested the protestors at that location to step aside to allow MPPs to gain access through that door. The protestors complied with the request, and a fair number of MPPs and essential staff, possibly as many as thirty-five or forty, gained access to the building. A conversation ensued between the Metro officers and Inspector Hope, the contents of which are remembered differently by the parties present. However, there is concurrence that discussion took place with respect to the recent access of MPPs, and that this was an approach which was evidently successful. Inspector Hope replied to the Metro officers that their point was taken.

15. From this conversation, Inspector Hope understood that Metro was to "take the lead" on ensuring MPP access for the remainder of the day. This, to Inspector Hope, was to include the access plans scheduled for 11:00 a.m. and 12:00 noon. This was not Metro's understanding.

16. At approximately 9:10 a.m., the Clerk of the Legislative Assembly, Claude DesRosiers met with the Speaker of the House, Allan McLean, and surveyed the scene outside the east door. As some people were gaining access at this time, the Clerk and the Speaker decided against proceeding with an injunction at this moment. However, about 20 minutes later (about 9:30 a.m.), another meeting took place, at which time the two decided that it was time to pursue the injunction. The Clerk and the Sergeant-at-Arms left the House shortly thereafter to meet with their counsel and to go to court to seek the injunction. The Speaker remained at Queen's Park.

17. At around the same time, reports came in to the OPP that a number of demonstrators had gained access to the MacDonald complex. While there was concern that assistance might be necessary in expelling them, ultimately this proved unnecessary.

18. At approximately 9:45 a.m., Superintendent Parkin spoke to Inspector Hope, and asked whether the 11:00 and 12:00 plans were still in effect. Inspector Hope's response was that they were still in effect and that the plan was to proceed as anticipated.

19. At around 10:15, Deputy Chief Molyneaux, Superintendent Parkin and Staff Inspector Ron Taverner (all Metro officers) met and decided that due to the scope of the event, it would be appropriate to establish a stationary command post for the purposes of Metro police operations during the day. This command post was established at Metro Headquarters, at 40 College St., by 10:30 a.m.. It should be noted that Metro radio communications, at their Metro Command Post, could not make contact with OPP radio through their normal communications system. An OPP liaison officer with an OPP radio was situated at the Metro headquarters and messages could be relayed by radio or regular cell phone to OPP senior officers through him.

20. Also at approximately 10:30, the east Legislature doors became blocked completely, with no one gaining access even after a 15 minute delay.

21. Several MPPs who had been unable to gain access to the east door congregated, as they had been instructed, at a parking kiosk located on the east side of the Legislative south lawn. The sight of these MPPs accompanied by both Metro and OPP officers drew a crowd at this location. As 11:00 a.m. approached, the plan to get the Members into the building complex via the south Whitney doors was put into effect. Metro and OPP plainclothes officers escorted the MPPs across Queen's Park Crescent towards the south Whitney doors. Pickets and demonstrators, realizing the intent, moved ahead of the escort, and filled the narrow stairs towards the south Whitney door. As the MPPs arrived,

they were blocked by the demonstrators on the steps, and were unable to access the south Whitney Building. A stalemate ensued for approximately five to ten minutes, during which OPSEU demonstrators and picketers, Metro and OPP police officers, and MPPs were pressed in various very close quarters. The Metro police made efforts to ask and move aside the OPSEU demonstrators but with the assistance of exhortations from Gavin Leeb to "link arms, link arms", the OPSEU demonstrators were able to successfully block access to the building for the MPPs. After approximately five minutes of the stalemate, Mr. Leeb spotted Sergeant Lazzotte approximately ten feet away from him on the scene. As crowd noise prevented him from making direct contact, Mr. Leeb telephoned Sergeant Lazzotte on his cell phone. He informed Sergeant Lazzotte that the Members would clearly not be able to get in at this location at this time, and requested that Metro escort the Members away, and try to gain access elsewhere. Metro officers did this, escorting the MPPs away from the south Whitney door and out to Queen's Park Crescent. There, the MPPs got into a Metro police van, and were driven away from the scene.

22. It is reasonable to conclude from all the evidence that sometime shortly after 10:30 a.m. the picket captains, marshals, and the organizers of OPSEU lost effective control over the picket lines at the East Door. In the ensuing chaos, many events occurred for which it is idle to attempt to track and assign blame. This practice does have relevance to recommendations upon which one should form a judgment concerning the future practices for staging and organizing demonstrations and picketing at the Legislative Assembly Building.

23. At around the same time, Gary Adams, head of one of the OPSEU security marshalling teams attended at the east door, where there was still blockage. He used a bullhorn to address the crowd to attempt to resolve the situation. As an additional strategy, he requested that the door be locked from the inside, in order to dissuade people from attempting to gain access through the crowd. Control was not immediately re-established.

24. After the stand-off at the south end of the Whitney Building, Inspector Hope was concerned and went outside on foot to meet with several Metro officers, including Staff Inspector Watson and Sergeant Pearson to discuss how best to ensure access of the MPPs who had been denied at south Whitney. The result of this discussion was the development of a diversion plan, which was to entail Metro establishing a visible cordon at the south Whitney entrance so as to draw protestors to that scene. Meanwhile, Inspector Hope and "his team" were to escort the MPPs, currently driving in Metro police vans, into the building complex via the north end of the Whitney Building. The brevity of this discussion meant that some details were evidently not concluded with any certainty. Sergeant Pearson, one of the principals in the discussion, came away unaware that Inspector Hope intended to use the CMU to ensure access via the North Whitney loading ramp. Inspector Hope did discuss this aspect of the plan with another Metro officer who accompanied him northward to rendezvous with the Metro vans.

25. The urgency with which the this MPP entrance plan was put into effect is illustrated by reference to Sergeant's Pearson's notebook entries relating to the discussion with Inspector Hope: "Hope, after conferring with other officers, advised me that the north Whitney doors were available." Pearson's notebook states: "I stated, [to Inspector Hope] >Give me a few minutes and then you provide the time and I will deploy manpower from the manpower present.'" Pearson then asked the Metro liaison officers "to make our vans available to the MPPs. Hope gives me time of 11:30 a.m. . . ." Pearson's notebook then states: "I asked - 'Will 15 minutes be enough'...[and he stated] 'yes'". In light of the fact that the opening of the session was still 2 hours away, the urgency was more apparent than real.

26. At approximately 11:25 a.m., the south Whitney diversion was put into effect. The establishment of the cordon by the Metro police apparently had the desired effect, drawing picketers and protestors to the location. Shortly after this point, the OPP CMU, mistakenly believing the vans had arrived, emerged from the print shop in the basement of the Whitney Building and proceeded up a loading ramp to a chain at the top of the ramp at Wellesley Street. At this time, Staff Sergeant Al Hough of the OPP, who was dressed in plain clothes, addressed the crowd through a megaphone. Videotapes of the event show the difficulty that the crowd might have experienced in understanding what was being said through the megaphone, due to crowd noise and lack of clarity. However, there is certainly some vocal response from the crowd which indicates that a request for co-operation had been made, and the crowd was unwilling to comply with that request.

27. Staff Sergeant McElary-Downer, commander of the CMU, during this time spoke with a picket captain at the location, indicating that there would be people coming through this location and they were looking for the protestor's assistance in allowing these people through. The picket captain responded that she did not think that "they could do that". In response, in order to show the forces available to her, Staff Sergeant McElary-Downer turned her head to give a command to her team to fan out. In turning back to continue conversation with the picket captain, however, she saw that the picket captain had moved away from the scene. Before being able to approach the picket captain again, which she planned to do, Staff Sergeant McElary-Downer was advised that Inspector Hope had given an order to withdraw back down the ramp.

28. The team withdrew, and waited at the bottom of the ramp, around a bend and out of sight from Wellesley Street. However, the CMU was still in plain view of a large number of protestors continuing to gather on a grass embankment to the south of and overlooking the loading ramp. During this time, the number of picketers and protestors at the scene began to grow rapidly. Had the crowd any desire to attack this police intervention, this defile or gulch in which the CMU took refuge would have been the ideal locale. Nothing like a counterattack occurred.

29. During this time, Inspector Hope was to the west, on the Southwest corner of Queen's Park Crescent and Wellesley Street, with the Metro vans containing MPPs looking for access. The first van drove through the intersection at Wellesley and Queen's Park Crescent and in fact drove past the North Whitney loading ramp, overshooting the access point, and continued away from the scene with its lights flashing. The second van proceeded through the intersection shortly before the traffic light turned red. The third van was then stuck at the red light on the opposite side of the intersection. In an effort to communicate with the third van, one of the MPPs in the second van exited the van and waved across the intersection to the second. These Metro vans were driven by Metro officers. The radio equipment in the vans operated on a Metro frequency which the OPP officers could not directly use to direct these vans to the South Whitney ramp.

30. At this time, the CMU again came up the ramp in order to form a cordon to meet the vans when they arrived with the MPPs. The CMU came up the ramp, stepped over the chain, and proceeded to push the protesters back with their shields in order to form a cordon. The CMU was met with "non-compliance" on the part of the protesters, who stood still, holding their ground. There was even some active resistance, as some crowd members pushed back against the heavily armed and protected officers. Some of the protesters were struck with their batons, typically in the knee region. At some point during this melee, one of the picketers was struck on the head with a police baton, and collapsed to the sidewalk. The videotape evidence, suggests that this blow was the result of a baton back-swing.

31. The Metro police vans containing the MPPs arrived at the scene and the MPPs were unloaded and escorted through the loose cordon that the OPP CMU had been able to establish. They stepped over the chain and proceeded down the ramp, entering the complex by the loading ramp doors. About 6 to 8 MPPs thus gained access.

32. Inspector Hope ordered his team to expand the cordon around the fallen protestor. This resulted in further pushing and use of batons from the CMU. At some point during the fracas, a picket sign was thrown at Sergeant Easterbrook, the logistics officer of the CMU, who curiously appeared to have had an active involvement in the CMU deployment. In reaction to this, several members of the CMU again advanced and pushed protesters in that area with their shields and struck with their batons. The injured protestor was tended to by a Metro officer, a Metro ambulance member, and a picket captain. Inspector Hope withdrew his team at this time. They stepped back over the chain and withdrew down the ramp, to the jeers, shouts, and occasional projectiles of the crowd. The CMU withdrew fully and had returned to the Print Shop in the Whitney basement by approximately 11:50 a.m..

33. A phone call between Superintendent Parkin and Inspector Hope shortly before noon included a statement from Superintendent Parkin that the Metro Force was concerned about the North Whitney incident, and that Metro would not be escorting MPPs to doors

until the situation had been reassessed. Inspector Hope responded that it was essential that Members get access to the Legislative Building.

34. Through all this confusion and efforts on the part of both police forces to guide MPPs into the Legislative Assembly Building, Inspector Hope, when asked by Staff Inspector Taverner to discuss with him the North Whitney or Wellesley Street altercation, stated that "he could not at this time, the priority was to get the MPPs inside."

35. At 12:00 p.m., as scheduled, a rally took place on the south lawn, with speeches being given by a number of speakers, including Leah Casselman, President of OPSEU. Most of the picketers and protestors were drawn to the speech at Queen's Park, leaving many fewer at the picket line locations around the complex. As part of this, most of the demonstrators around the east door left, leaving it open to access.

36. Over the course of the next hour or so, ten to fifteen MPPs who had not yet gained access to the Legislative Assembly collected at Metro Police Headquarters, and at an area behind Maple Leaf Gardens. Eventually, all of those MPPs congregated at the Maple Leaf Gardens meeting site.

37. At approximately 12:45 p.m., Gary Adams and members of his security marshalling team approached Metro officers at Metro Police Headquarters with an offer to assist them in escorting MPPs into the Legislative buildings. According to Staff Inspector Taverner, Mr. Adams advised "that he could arrange up to seventy [probably a auditive error, seventeen being more realistic] marshals to assist MPPs' access to the building." In this conversation, Mr. Adams told Staff Inspector Taverner that he was aware that the OPP was planning to use Frost North as an access point because of the large number of CMU officers inside the Frost North Building. By this point Inspector Hope had ordered his CMU to that point and had them put up brown paper on the windows to mask their movement, which may in fact have had the opposite effect. The offer of assistance was relayed by Staff Inspector Taverner to Inspector Hope who initially declined the marshals' offer because "they did not wish to disclose the location to be used". Staff Inspector Taverner informed Inspector Hope that the pickets were already aware of the proposed access through Frost North. After the offer was repeated, and with the encouragement of Staff Inspector Taverner, Inspector Hope acceded to the use of the marshals as part of an access plan.

38. A suggestion by the marshals that a loading ramp to an underground garage be used to drive the MPPs into the building was rejected as impossible by the OPP, owing to garage being time-locked, and concerns over OPP vehicles parked in that garage. Rather, the plan to bring MPPs into the North Frost Building via the north door at 95 Grosvenor Street was confirmed. At the conclusion of this discussion, Inspector Hope once again stated to Taverner that there was "some urgency to get the MPPs inside." This discussion took place at 12:50 p.m., only forty minutes before the commencement of the sessions.

39. It was evidently agreed between Mr. Adams, Staff Inspector Taverner, and Inspector Hope that the security marshals would be used as part of a plan to get MPPs into Frost North. However, it is equally clear that the role of the marshals was viewed differently by the two Inspectors. Staff Inspector Taverner, along with other Metro officers and Mr. Adams, testified that his view of the plan was that OPSEU marshals in combination with Metro Area Foot were to attempt to garner access for the MPPs. If they were unsuccessful, Metro units, moving up through the POU to the Mounted Unit if necessary, would assist in getting the MPPs inside. Inspector Hope viewed the plan, however, as being little changed from his original intention. The CMU would establish a cordon for the MPPs, and if the marshals were able to assist in creating such a cordon, and hence in escorting the MPPs, so much the better. This rushed co-ordination effort, conducted over the telephone did not result in a settled plan. The police would have been better served to spend 5 minutes to ensure a common understanding of the plan.

40. By approximately 1:00 p.m., the CMU had arrived at the North Frost Building in preparation for the access plan. On the Metro side, the Public Order Unit and Mounted Units were on standby just around the corner nearby, and Metro vans were ready to escort the MPPs from behind Metro Police Headquarters. Metro Area Foot in soft equipment was in amongst the crowd outside the door. At approximately 1:20 p.m., the OPSEU marshals left Metro Police Headquarters for the North Frost Building. Shortly thereafter, Metro vans left Police Headquarters for the same location. *En route* to the North Frost Building, the Metro vans passed the marshals, who had not yet had sufficient time to walk over to the site. The vans continued past the marshals, and proceed to the North Frost Building. Staff Inspector Taverner, the head of the Metro POU, was in the vans.

41. By 1:30 p.m., a crowd of considerable size had gathered in front of the North Frost Building. Members of the Metro Police CRU, in "soft", or regulation, uniforms, were among the crowd and standing on the steps leading to the door. The door had been barred by obstacles and rope tying the handles, making their opening difficult. The doors were opened and the obstacles removed.

42. Because the vans were from Metro and driven by Metro officers with Metro radio equipment operating on a different frequency from the OPP radio unit, it was not possible for OPP to co-ordinate the arrival of the van with that of the marshals and the deployment of the CMU. The Metro vans arrived at North Frost sometime shortly before 1:30 p.m., approximately 30 or 40 seconds before the marshals were able to arrive. Shortly after the vans arrived, Inspector Hope, who considered there was or could be a risk to the MPPs, had the CMU was deployed from inside the building to create a cordon from the road to the building. The Metro officers who were in the crowd or vans did not consider it necessary to call for the Metro police. Staff Sergeant Hough testified that he warned the crowd to stand back, using his megaphone through the opening in the still-barred doors. He then repeated his warnings as he exited the building, in front of the CMU. However,

even Staff Sergeant McElary-Downer, who was standing directly behind Staff Sergeant Hough, at the head of the CMU, testified that she did not hear any warnings from the megaphone. The videotape evidence of the North Frost deployment does show Staff Sergeant Hough first out of the doors, megaphone in hand. However, he is rapidly overtaken by the CMU members, who proceeded to create a cordon, as directed. This being the case, it is unlikely that, whatever was said, there was any clearly intelligible indication that the police were attempting to introduce the MPPs into their legislative session and would do so by their several crowd control units.

43. In the formation of this cordon, the OPP employed their shields, batons, and occasionally pepper spray to move the crowd back. Of the two lines formed in the cordon, the westerly one was considerably more aggressive and violent than the east. This may have been due in part to the presence of a wheelchair access ramp to the east, which formed a physical barrier keeping the crowd back. Further, when the security marshal team arrived, they inserted themselves between the crowd and the CMU on the east side of the cordon.

44. A difficulty arose in the disembarkation of the MPPs out of the first van, as the vans had sliding panel doors only on the passenger side. As the vans had arrived from the east, the sliding doors were on the far side of the van, away from the north doors to the North Frost Building. The first van was therefore debussed via the driver's side door, which involved the MPPs crawling over the driver's side seat. One van and a car thus sat unprotected in the crowd for a number of minutes with no violence directed against them. Once the first van was fully debussed, it pulled away, and a second van pulled up to the head of the cordon. Inspector Hope realized that the sliding door again created a problem, and advised his unit to expand the cordon to encompass the far side of the van so that MPPs could safely exit through the sliding door. This involved an expansion of the cordon which entailed further pushing of members of the crowd. At some point during this time, Staff Inspector Taverner decided that the assistance of the POU was appropriate, and deployed a squad of POU personnel to assist the OPP CMU. The POU carried batons, but they were not drawn, resting instead in baton holders. The POU drew up along the west side of the cordon, where there was a short episode of shoving the crowd back with their shields only. Otherwise, there is no evidence of any violence on the front established by the POU.

45. Once the second van of MPPs had been fully emptied, a red car containing other MPPs which was also at the scene was unloaded, and the MPPs entered via the corridor. The CMU then withdrew back into the North Frost Building, and the POU withdrew to the east, down Grosvenor Street. After some chanting directed at the north Frost Building, the crowd began to disperse from the area.

46. Sergeant Pearson's notebook reports that the OPP CMU pushed the people back, opened the lane, and "Members, MPPs entered. OPP pushing people with shields. Lady

on left fell over the rail. OPP retreated inside leaving us out. Crowd upset. POU out with crowd to support us. Crowd vocal. Noticed female injured."

47. Approximately 15 minutes later, another MPP, Minister Al Leach attempted to enter the North Frost Building, escorted by Metro police officers and OPP plainclothes officers. A crowd of picketers and protestors blocked his passage, creating a scene similar to that scene at the south end of the Whitney Building at approximately 11:00. Mr. Leach was unable to gain access via the North Frost Building, and eventually turned and walked away from the area.

48. At 2:00 p.m., the demonstration was scheduled by OPSEU to end, and the crowds thinned considerably. Shortly thereafter, members of the Metro CRU began to stand down. Neither police force leadership was aware of the closing time of 2:00 p.m. With this in mind, one must note the irony in the fact that the major altercation occurred at around 1:30 p.m.

49. A joint debriefing between Metro and OPP forces was held at approximately 2:30 p.m. at Metro Headquarters. A number of representatives of the two forces expressed their concerns over what had happened during that day. Many of the officers commented that there had been a considerable lack of communication, and that there had been difficulties in not having a unified command post, where both forces were represented by high-ranking officers.

50. At approximately 6:00 p.m., the injunction that had been sought by the members of the Speaker's office before Justice Winkler was granted. The Clerk and the Sergeant at Arms returned to the Legislature with this injunction, arriving at approximately 7:00 p.m..

51. The Speaker had been present throughout the day. He received no reports during the day from his own staff (the OGPS) or the OPP. He testified that he did not know any violence had occurred until the television news that evening. He presided over the House at 1:30 p.m. and thereafter.

APPENDIX B(3)

POINT FORM CHRONOLOGY

1973

Ontario Government Protective Services established

July 25, 1988

Report on the Present Security Environment at Queen's Park

April, 1990

Order in Council #957/90 defines Legislative Precinct

November 25, 1992

Enactment of Bill 40, An Act to Amend Certain Acts Concerning Collective Bargaining and Employment

November 30, 1992

Memorandum of Understanding signed between Solicitor General and the Speaker

May, 1993

Security guidelines issued by Speaker Warner

November 30, 1993

Amendment to the November 30, 1992 Memorandum of Understanding

December 11, 1993

Enactment of Bill 117, An Act to Revise the Crown Employees Collective Bargaining Act

June, 1995

Ontario General Election

July 27, 1995

A Strategic Approach to Queen's Park Services drafted by OPP's S/Sgt. McElary-Downer

September, 1995

Insp. Hope moves from Queen's Park to Regional Command in Aurora

September 26, 1995

Speaker McLean elected

September 27, 1995

Demonstration during Speech from the Throne turns violent; demonstrators overrun barricades and confront police at the front door, resulting in a stand-off. Policed by Metro and LSS

October 5, 1995

Speaker requests all-party committee to look into matters of security at the Legislative Assembly

October 11, 1995

Legislative Assembly meets to discuss strike planning

October 19, 1995

Letter sent by Reg. Comm. Currie of the OPP to Dep. Ch. Molyneaux at Metro re security at the legislative grounds

October 24, 1995

Speaker writes letter to S/Sgt. Hough authorizing OPP and OGPS to act as agents of the occupier

November - December, 1995

OPSEU passes information to its members concerning strikes, collective bargaining and the government offer; Mobilization Task Force established for Region 5

November 1, 1995

New initiative implemented by LSS of Entry Control Unit consisting of 10 OGPS officers

November 10, 1995

Enactment of Bill 7, An Act to Restore Balance and Stability to Labour Relations and to Promote Economic Prosperity and to make Consequential Changes to Statutes Concerning Labour Relations

December, 1995

Draft Memorandum of Understanding sent from Speaker to Metro

January, 1996

OPSEU involved in strike vote preparation, information dissemination and encouragement to vote

Legislative Assembly hires counsel re issues of access

January 20, 1996

OPSEU Region 5 holds educational weekend

January 29, 1996

Last day of legislative sittings before the OPSEU strike

January 30, 1996

Enactment of Bill 26, An Act to Achieve Fiscal Savings and to Promote Economic Prosperity through Public Sector Restructuring, Streamlining and Efficiency and to Implement Other Aspects of the Government's Economic Agenda (the "Omnibus Bill")

February, 1996

Metro Industrial Liaison Section issues Labour Disputes manual and Strikes and Lockouts pamphlet, indicating Metro policy for strikes

February 2, 1996

Revised Picket Strategy Guidelines distributed by OPSEU

February 5, 1996

Insp. Hope and OPP sergeants begin development of SMEAC document/security plan; drafted by S/Sgt. MacDonald after meeting

February 7, 1996

Student Demonstration - Students overrun barricades and "storm" Legislature; policed by Metro and OGPS personnel; charges laid against four individuals including "intimidating the Legislature"

February 8, 1996

Legislative Assembly, OPP and ORC hold strike planning meeting

OPP and Metro attend joint presentation on labour relations and picket line management

S/Sgt. Hough meets with the Speaker to discuss Feb. 7 incident

February 13, 1996

OPP meets with Metro at Queen's Park; security plan discussed

Metro Industrial Liaison meets with ORC and OPP re pending OPSEU strike

February 14, 1996

Metro OPSEU Strike Task Force meets

February 15, 1996

Legislative Assembly sends memo to staff and occupants of the building stating that the Assembly is not involved in the labour dispute, and that the Legislative Assembly will be open during any strike

February 18, 1996

OPSEU members vote about 68 % to reject the government's bargaining proposal and to go on strike

February 19, 1996

Metro Strike Planning Committee meets

February 20-25, 1996

OPSEU prepares for strike, particularly logistics: picket signs, fire barrels, strike schedules

February 20, 1996

SMEAC document/security plan provided to Sgt.-at-Arms by OPP

Metro Strike Planning Committee meets

OPP and Metro meet at Metro HQ

February 21, 1996

SMEAC plan approved by Speaker

Metro sends draft Memorandum of Understanding to Speaker

Meeting between members of the Metro Strike Planning Committee and provincial representatives of OPSEU

February 22, 1996

OPSEU sends letters to Liberal and NDP Caucuses re access during strike

February 23, 1996

Bulletin for Occupants in the Legislative Precinct produced by Speaker's Office

Hamilton General Strike; policed in part by OPP and Metro; POU called out

February 25, 1996

SMEAC document reduced and summarized by OPP

February 26-28, 1996

OPSEU strike begins as staggered strike - different locals walk out on different days; picket lines not militant - celebration attitude; no difficulty with access

CMU in basement of Whitney building for first three days of strike, but not deployed outside building

February 26, 1996

Speaker's Office meets with Chief Boothby of Metro for 5 minutes; nothing to be done until standing committee reports

OPP conducts orientation session for CMU in early hours of morning

OPSEU holds peaceful demonstration at south door of legislature involving 400-500 people

February 28, 1996

OPSEU picketers in Queen's Park tunnel

February 29 - March 6, 1996

CMU not sent to Queen's Park

March 4-8, 1996

Most strike locations peaceful, but picket lines becoming harder; occasional shutdowns at the MacDonald Block, and east door toughened from time to time

March 6, 1996

OPSEU strikers occupy MacDonald Block, but leave after negotiations with Metro

March 7, 1996

Conservative MPP Douglas Ford attempts to access legislature without waiting out protocol, is prevented by picketers and accompanied inside by a plain-clothes OPP officer

March 8, 1996

Hepburn Block blocked at intervals during the day; North Whitney blocked around noon; OPSEU demonstration at south doors with about 500 demonstrators, during which a petition is presented to the government

March 11-15, 1996

15 minute delay being imposed at the east door in the mornings

March 11, 1996

Blockage at the subway tunnel, and some blockage at east Legislature door

March 12, 1996

Conservative MPP David Johnson and another impeded in gaining access to the Assembly

Injunction sought and obtained with respect to the subway tunnel

March 13, 1996

OPSEU planning meeting for 18 March with OFL/MLC/CLC

OFL/MLC/CLC send flyers to associated parties and members re Solidarity Picket with OPSEU for 18 March

Revised Bulletin for Occupants in the Legislative Precinct issued by Speaker's Office

Sgt.-at-Arms speaks to caucus representatives; NDP and Liberal caucuses indicate that no trouble is expected with OPSEU

MBS representative phones Clerk; Clerk stresses independence of Legislature; no need to co-ordinate efforts with the government

March 14, 1996

Clerk of the House sends letter to Don Sheppard, copied to caucuses and Leah Casselman

Conservative MPP Wayne Wettlaufer and others pushed and shoved as attempting to enter the Assembly after refusing to observe fifteen minute wait

Supt. Parkin meets with S/Insp. Taverner re POU call-out for the 18th

Some distribution of timetable for 18 March by OPSEU

March 15, 1996

A.M.

Adams of OPSEU calls Metro re 18 March; told to call Sgt. Pearson back early on the 18th

Sgt.-at-Arms meets with S/Sgt. Hough and Insp. Hope to finalize/formalize plan for Monday

Sgt.-at-Arms and S/Sgt. Hough meet with Clerk to talk about plans for access

Sgt.-at-Arms speaks to caucus representatives re plans for access

Insp. Hope, S/Sgt. Hough, S/Sgt. Moores, Sgt. Easterbrook and Sgt. McDonald meet re security plan

P.M.

OPSEU staff meeting re plans for 18 March/timetable and picket captain assignments

Sgt.-at-Arms meets with the Clerk and speaks to caucuses

Metro POU called out

NDP caucus advises members to arrive early, participate in the picket line, then enter as a group

Meeting between Metro and OPP re 18 March

March 16, 1996

OPP and Metro put personnel together for Monday

NDP caucus speaks to OPSEU re access on Monday

March 17, 1996

OPSEU holds meetings for Local presidents and members and Picket Captains; stress non-violence, arrangements/timetable for the day, shut down MacDonald complex/15 minute protocol at the east door, logistics

Metro and OPP prepare for Monday; personnel call-outs and confirmations

March 18, 1996

5:00 am

OPP arrive at Queen's Park; briefing of CMU members

5:30 am

Gary Adams briefs OPSEU security marshals; Gavin Leeb arrives at Queen's Park

6:00 am

Parade of 52 Division officers by Supt. Parkin

Gary Adams calls Sgt. Pearson; is advised to speak to S/Insp. Watson

6:00-6:30 am

Supt. Parkin calls Insp. Hope: no new information/11:00 and 12:00 plans in effect

6:26 am

900 Bay St. entrance blocked

6:30 am

Conversation between Gary Adams/Bill Howes and S/Insp. Watson and other Metro officers

Whitney North entrance blocked

6:56 am

Hepburn entrance blocked for the rest of the day

6:58 am

Whitney North blocked until 2:00 p.m.

7:00 am

Conversation between Gavin Leeb and Sgt. Lazzotte

7:15 am

Sgt.-at-Arms arrives at Legislature

Briefing of Metro POU by S/Insp. Taverner

7:30 am

People being let in east door after 15 minutes

8:00 am

Pickers not allowing access to east door

8:09 am

Conservative MPP Al Palladini arrives at east door, is turned back by picketers; returns to car and is escorted away by marshals

8:12 am

Meeting between Metro units

8:25 am

People let in the east door

8:30 am

NDP MPP Dave Cooke and other NDP caucus members arrive at Legislature

SOUTH FROST I

CMU deployed outside rear South Frost; 4-5 protestors; 3-4 MPPs gain access

Meeting between Supt. Parkin and S/Insp. Watson re earlier conversation with Gary Adams

8:45 am

SOUTH FROST II

CMU deployed outside rear South Frost again; 10-15 protestors; 3-4 MPPs gain access

8:55 am

Insp. Hope advises S/Sgt. Hough that members would be coming in via the Frost building

9:00 am

SOUTH FROST III

S/Insp. Watson & Sgt. Pearson talk to Insp. Hope; Metro requests protestors to stand aside to bring MPPs in: 35-40 MPPs gain access

Clerk arrives at the Legislative Assembly

People being let in the east door, including Legislative Assembly and MacDonald block employees

9:10 am

Clerk speaks to Speaker, decides against injunction proceeding at that time

S/Insp. Taverner unsuccessfully attempts to contact Insp. Hope

9:30 am

Clerk speaks to Speaker, decide to pursue injunction within 15 to 20 minutes; Sgt.-at-Arms informed shortly thereafter

Reports of protestors entering MacDonald complex

9:45 am

Phone call between Supt. Parkin and Insp. Hope re 11:00 and 12:00 plans still in effect

10:00 am

Clerk and Sgt.-at-Arms leave for court to obtain an injunction

All members of NDP Caucus in Legislature

10:15 am

OPP call for assistance re protestors in the Hepburn Block

East Legislature doors are shut down by OPSEU; Metro officers attend to solve problem

Meeting with D/Ch. Molyneaux, Supt. Parkin and S/Insp. Taverner of Metro; decision made to establish fixed command post

10:30 am

Metro fixed command post established

S/Insp. Taverner unsuccessfully attempts to contact Insp. Hope

10:35 am

S/Insp. Watson and Sgt. Pearson report events at South Frost to Supt. Parkin

10:45 am

Phone call between Supt. Parkin and Insp. Hope

10:49 am

Supt. Parkin informs S/Insp. Taverner of 11:00 plan; S/Insp. Taverner unsuccessfully attempts to contact Insp. Hope

10:50 am

OPP and Metro officers with MPPs draw crowd on east lawn

11:00 am

SOUTH WHITNEY

Metro and OPP plain-clothes attempt to assist MPPs into South Whitney; OPSEU blocks the doors; stand-off - MPPs do not gain access; MPPs put in vans

11:00/11:30 am

Gary Adams attends at east door, uses bullhorn to address crowd; door locked from inside

11:15 am

Gavin Leeb of OPSEU departs for courthouse

Conversation between Insp. Hope, S/Insp. Watson, Sgt. Pearson, other Metro officers re development of diversion and access plan

Sgt.-at-Arms calls S/Sgt. Hough re 11:00 plan

11:18 am

Some MPPs get in the east door

11:25 am

S/Insp. Taverner meets S/Insp. Watson with MPPs from east door; MPPs put in POU van

11:25 am

South Whitney diversion put into effect

11:26 am

NORTH WHITNEY LOADING RAMP I

concerns with respect to the key to the chain

vans on Wellesley, west of Queen's Park Circle

S/Sgt. Hough exits the print shop with megaphone

CMU comes up the ramp for the first time

vans not at the top of the ramp

S/Sgt. McElary-Downer speaks to picket captain; requests compliance-refused

CMU withdraws around the elbow

not visible from the street

visible from the South embankment

crowd grows - people coming from South Whitney diversion

first van overshoots ramp

MPP steps out of van and waves

11:40 am

NORTH WHITNEY LOADING RAMP II

CMU comes up the ramp for the second time

arrival of vans

CMU comes over chain and forms cordon

use of batons and shields

picketeer hit on the head - falls

6-8 MPPs come through cordon, over chain, and down ramp
Hope instructs CMU to expand to cover off Giles
picket sign thrown at Sgt. Easterbrook
CMU advances on crowd on west side
CMU ordered to withdraw

11:45 am

Gary Adams and marshals/security team arrive at North Whitney

11:50 am

CMU back in print shop; Insp. Hope advises S/Sgt. Hough that alternate plan to 12:00 plan necessary

11:55 am

Phone call between Supt. Parkin and Insp. Hope

12:00 noon

OPSEU speakers at South Lawn; picketers leave east door

Meeting with Supt. Parkin, S/Insp. Taverner and S/Insp. Watson

S/Sgt. Hough advised by Metro to have MPPs meet behind Maple Leaf Gardens

12:05 p.m.

S/Insp. Taverner unsuccessfully attempts to contact Insp.

12:10 p.m.

S/Insp. Taverner advises Sgt. Muscat to get marshals to assist with moving MPPs

12:15 p.m.

East door is quiet

12:40 p.m.

Insp. Hope calls S/Insp. Taverner: MPPs are behind Maple Leaf Gardens; requests Metro assistance in transporting MPPs; Insp. Hope advises re use of CMU to get MPPs in

12:45 p.m.

Gary Adams and other marshals meet with S/Insp. Taverner, offer assistance for access to North Frost; marshals recommend other plan to drive in

12:50 p.m.

Conversations between S/Insp. Taverner and Insp. Hope: initial refusal of assistance by marshals; plan to drive in rejected; acquiescence to use of marshals by Insp. Hope

1:00 p.m.

Metro POU and Mounted Unit on standby; vans behind Metro HQ

CMU arrives at North Frost

1:20 p.m.

OPSEU marshals leave Metro HQ for North Frost

Metro vans with MPPs leave for North Frost

Vans pass marshals *en route*

1:30 p.m.

NORTH FROST (95 GROSVENOR)

crowd has grown considerably in size

Metro Area Foot outside on steps and in crowd

door barred by obstacles and rope

obstacles/rope removed

doors opened by Metro Area Foot

vans arrive

CMU deployed to create cordon

marshals arrive 30 seconds later

difficulty exiting building due to blockage

marshals assist on east side of cordon

west side of cordon more aggressive/violent than east

batons/pepper spray used by CMU on west

first van debussed out of driver's side door

first van pulls away, and second drives up

cordon expanded around to north side of second van

Metro POU deployed and assists

POU does not have batons out

second van debussed out of north side sliding door

second van pulls away

red car seen and unloaded

CMU withdraws into building

POU withdraws away from area

Legislative Assembly scheduled to open

1:40 p.m.

Meeting with D/Chief Molyneaux, Supt. Parkin, S/Insp. Taverner and S/Insp. Watson of Metro

Gary Adams and security marshals meet on South Whitney lawn

1:44 p.m.

Conservative MPP Al Leach unsuccessfully attempts to gain access to North Frost

2:00 p.m.

Scheduled end of OPSEU demonstration

2:05 p.m.

Metro Area Foot officers begin to stand down

2:25 p.m.

Brief meeting between D/Ch. Molyneaux, D/Ch. Kerr, Supt. Parkin of Metro and Insp. Hope of OPP

2:30 p.m.

METRO/OPP DEBRIEFING

joint forces debriefing held at 40 College
concerns re communications/command post
concerns re plainclothes officers
planning for next day

3:30 p.m.

S/Sgt. Hough meets with Speaker; Speaker requests report

4:30 p.m.

Metro POU officers stand down/report off duty

6:00 p.m.

Injunction granted in favour of Speaker's Office by Winkler J.

7:00 p.m.

Clerk returns to Legislature with injunction
Sgt.-at-Arms returns to Legislature, given report/letter by Insp. Hope and S/Sgt. Hough

March 19, 1996

Sgt.-at-Arms briefed on March 18 by Insp. Hope and S/Sgt. Hough

March 20, 1996

All party standing committee on security report tabled

March 29, 1996

Demonstration by OPSEU - 300-400 people; blockage of access; Sgt.-at-Arms calls Metro for assistance

April 14, 1996

Joint training session between POU and CMU

April 18, 1996

Report of all party standing committee on security adopted

APPENDIX C

COMMUNICATION PROBLEMS

1. The occasions where violence erupted illustrate the flaws or defects in both planning and execution relating to the access of MPPs to the Legislature in time for the opening session. There was apparently a lack of awareness and communication by the two police forces, due in part to technological difficulties and incompatibilities, and due in part to misunderstanding and insufficient planning. Further, the two reinforced each other: insufficient planning lead to technological difficulties; technological difficulties resulted in poor communication and misunderstanding. Examples of misunderstandings are addressed both in the body of this report, and in Appendices B and D. This Appendix will address the technological nature of the communications problems.
2. The first physical limitation on communications between the forces came in the form of the radio systems being used by the OPP and Metro. These radio systems were incompatible, in that the channels being used by each could not be received by the other. The result was that the police forces had parallel but distinct communications networks which could not be overheard or tuned into by the other force.
3. The only links between the radio systems were the OPP liaison officer equipped with an OPP radio, who was located in the Metro Command Post, and the counterpart Metro liaison officer with a Metro radio, who was stationed at the OPP Command Post. This single line of communication was the only way that the two forces' radio systems could interact. Thus, for example, if Staff Inspector Taverner, head of the Metro POU, had wished radio communication with Inspector Hope, head of the counterpart OPP CMU, he was unable to achieve it. Anyone assessing the conduct of the OPP and its CMU on these occasions must be aware that these difficult tasks were undertaken by the police unit in a field of chaos and confusion. Communications were congested, slow, or impossible. The two police forces had incompatible communication facilities. A message from one field unit to the other force's field unit had to be relayed through the command post where each force had a radio-equipped liaison officer who then verbally passed the message to his or her counterpart at the command post and thence by radio to the other field unit. The result was a communications system just slightly better than smoke signals.
4. Worse, it was discovered that the radio did not function in certain "dead" areas in the Queen's Park Tunnel system, areas where Inspector Hope, Staff Sergeant Hough and members of the OPP CMU were frequently to be found throughout the course of March 18, 1996. Thus, radio logs were rife with examples of the OPP Command Post having difficulty "raising" Inspector Hope on the radio.

5. Staff Inspector Taverner's diary makes reference to the serious practical impediment to continuous and easy communication between the two police forces and particularly between their highest field commanders. For example, Staff Inspector Taverner at 9:05 a.m., at 10:30 a.m., at 10:49 a.m., at 12:05 p.m., and at 12:40 p.m. was unable to make contact by radio with Inspector Hope. These two officers were, respectively, the commander of Metro's Public Order Unit and the Incident Commander of the OPP field forces. The critical period on 18 March was from 7:00 a.m. to 1:30 p.m. During this period, communication by radio apparently reached such a level of inefficiency or impossibility that Inspector Hope gave Staff Inspector Taverner a new telephone number through which to contact him.

6. Added to this technical conundrum, the police forces became aware during the course of the day that their concerns about the security of their radio transmissions were justified, in that radio broadcasts were being monitored by members of OPSEU. This was being done through the simple method of radio scanners, which, as was confirmed before the Commission by representatives of OPSEU, are available from any Radio Shack. It is droll to note that OPSEU therefore appeared to be receiving more communications from each police force than the other police force was. In response to this information, the OPP and Metro chose to use their radios less frequently, cancelling the possible benefits of this system of communication. Staff Inspector Taverner before the Commission indicated that the Metro Force has been looking into the possibility of secured or coded channel radios to ensure communication security, but that this was a potentially expensive proposition.

7. These limitations may provide the explanation for the resort by both forces to cellular phones. However, the evidence confirms the general understanding in the community in this day and age that even cell phones are insecure.

8. Cell phone numbers were also exchanged between Metro and the OPP, particularly those of Inspector Hope and the Metro Command Post. However, it was discovered that the cell phones also did not function in "dead" areas in the tunnels. The result of this was that when radio communication failed and cell phone communication failed, there was at times no method for Metro to get hold of Inspector Hope.

9. Land lines (normal, wired telephones) were also in use, but due to their stationary nature, were not always at hand. Again, the evidence before the Commission is replete with examples of attempts being made by Metro to contact Inspector Hope when he was not near a land line telephone, and radio and cell phone communications were ineffective.

10. The effect that this concatenation of communication difficulties had on March 18, 1996 is clear. It is difficult, if not impossible, to communicate effectively when the technical mode of communication is faulty. Several instances can be seen in which better technological communication systems between the police forces may have aided an

understanding between officers as to what was going to occur. As a result of the absent link between Metro and OPP officers, for example, during the stand-off at the south doors to the Whitney Building at 11:00 a.m., Metro officers escorting MPPs towards the door were not in direct contact with the OPP standing on the other side of the door. Thus, while Gavin Leeb of OPSEU was able to call PC Lazzotte of Metro directly on his cell phone outside the door, the OPP had to communicate through the Metro Command Post in order to determine whether the Metro Officers saw themselves in need of OPP assistance.

11. Similarly, the OPP CMU, while being deployed at the north end of the Whitney Building at 11:20 a.m., was not in contact with the Metro officers who were being deployed at the south end at the same time as part of the diversionary plan.

12. A final dramatic example of this technological communication difficulty took place at the North Frost Building. There was also lack of communication between any of the forces and the radio-equipped vans bringing the MPPs to the scene at the North Frost Building. Fragile or unreliable radio communication between the picket captains or marshals of OPSEU and the police units resulted in a lack of co-ordination. Similarly, there was no continuous radio link between the vans transporting the MPPs to Frost North and the picket captains or marshals of OPSEU coming to the aid of these operations. Further, there, although Sergeant Pearson and his officers were standing outside the North Frost Building door, and addressing members of the crowd, Inspector Hope and the OPP CMU, located inside those doors, were not in direct contact with them and had no way of becoming so. Indeed, there appears to have been a period of approximately twenty minutes between 1:00 and 1:20, during which there was no communication between OPP and Metro officers, despite the impending bi- or tri-partite plan which was to be effected at the North Frost Building.

13. Direct communication between the officers might have at the very least alleviated some of the concerns expressed by Sergeant Pearson about being either crushed by the doors upon the exit of the CMU, or having officers in soft tactical gear and hard tact officers in the same location at the same time. Further, while the OPP liaison officer with an OPP radio was in the lead van of the MPP convoy from Metro Headquarters for the North Frost building access plan, there was apparently no use of this potentially valuable tool during this twenty minute silence.

14. Technologically, at least, there were clearly insufficient links between Metro and OPP officers. Direct communication might have taken place in a number of situations such that confusion as to plans could have been resolved between the forces. This, in part, lead to some of the misunderstandings which led to catastrophe and chaos on 18 March. Both forces candidly acknowledged this difficulty and, if joint operations are to be conducted in the future, it would be expected that they would address it.

APPENDIX D

MAJOR ACTORS

APPENDIX D(1)

THE SPEAKER

Structure of the Office of the Legislative Assembly

1. The Office of the Legislative Assembly (the "Speaker's Office") is an independent administrative arm of the government which facilitates and organizes the operation of the Legislature. It was created as a result of the recommendations of the Camp Commission on the Legislature, through amendments, in 1974, to the *Legislative Assembly Act* (now R.S.O. 1990, c.L.10). This function includes such matters as the operation of the Legislative Library, Hansard legislative reports, broadcasting, the page program, public relations, building restoration, and security. Ultimately, it reports to the Members of the Legislative Assembly of Ontario. Functionally, though, it is headed by the Speaker of the Legislature. On March 18, 1996, this was the Hon. Allan McLean, who had been elected to the position by the House the previous September.

2. Reporting to the Speaker on matters of security in the Legislative Precinct, and performing ceremonial duties in the chamber, is the Sergeant-at-Arms, a position held by Thomas Stelling, from his appointment in 1976 through his retirement shortly before the commencement of this Inquiry's hearings. Ontario had not had a Sergeant-at-Arms prior to Mr. Stelling since the 1930's. Prior to 1974, security in the Legislative Precinct had been run by the executive branch.

3. Also reporting to the Speaker on matters of an administrative nature, and the direct overseer of the various branches of the Speaker's Office, is the Clerk of the House, who at all relevant times was Claude DesRosiers, who has held the position since 1986. The Speaker, Mr. Stelling and Mr. DesRosiers all appeared to give testimony before this Commission, as did Mr. Paul Tranquada, an employee in the Assembly Services branch of the Speaker's Office.

4. The role of the Speaker has changed considerably since the days of its roots in the English Parliament. Before the Commission, the Speaker took a simple and straightforward position. He was the modern manifestation of an ancient office which evolved from the commencement of the parliamentary form of democratic government. As

the presiding officer over the sessions of the Legislative Assembly he was apolitical in the discharge of that function, albeit continuing to represent his constituents as a member of the PC Caucus in public matters not interfering with his presiding function in the House. He also apparently remained on the PC Caucus e-mail circulation. He saw himself as guardian of a number of ancient rights which inherently attach to a legislative body so as to enable it to function. These rights are collectively known as parliamentary privileges. It was to his role as guardian of these privileges that the Speaker pointed in part to justify his involvement in security in the Legislative Precinct, and to underscore the difference between Members of Parliament gaining access to the Legislature and status of the Office of the Assembly as a third party to the labour relations dispute. These legal and constitutional issues which this position raises are addressed in substance in Appendix E(1).

5. Statutory authority for the Speaker's control over the Legislative Precinct outside the Legislative Chamber is found in s. 103 of the *Legislative Assembly Act*:

103.-(1) Such part of the Legislative Building as may be designated by the Lieutenant Governor in Council in addition to the Legislative Chamber shall be under the control of the Speaker and the order in council shall be laid before the Assembly.

6. The section continues with respect to security matters in this area:

(2) The Speaker shall establish guidelines for the security of the Legislative Chamber and the other parts of the Legislative Building that are under his or her control.

(3) The security of the parts of the Legislative Building designated to be under the control of the Speaker shall be enforced by the same personnel that enforce security in the other parts of the Legislative Building.

7. The "parts of the Legislative Building" under the Speaker's control were determined for the first time by Order-in-Council in 1990 to be the entire Legislative Building, the grounds to the south of the building, and the first two floors of the Whitney Block. This determination was made in reference to a Memorandum of Understanding of 1988 between the Minister of Government Services (now the Management Board Secretariat), and the Speaker, which dealt with a variety of services, but not security.

8. Later amendments and other Memoranda of Understanding between the Government of Ontario and the Speaker have lead to the contractual expansion of the Legislative Precinct. However, there does not appear to be a corresponding Order-in-Council determining those new parts of the Legislative Precinct to be under the control of

the Speaker by virtue of the *Legislative Assembly Act*. It appears that nobody has ever been concerned about this authoritative lacuna.

9. The *Legislative Assembly Act*, s. 104, authorizes the Speaker to call upon any Minister or agency of the Crown to provide any service that the Speaker considers necessary for the operations of the Assembly. In order for the Speaker's Office to fulfil its responsibility for security in the Legislative Precinct, the Speaker (at that time Speaker Warner) contracted with the Solicitor General for the provision of security personnel in the form of OGPS and OPP officers, who comprise the Legislative Security Service. The head of the LSS, who at the relevant times was Staff Sergeant Allan Hough, reported to the Sergeant-at-Arms for issues of security at Queen's Park.

10. Also under the terms of the MOU, the Solicitor General provides OPP officers for the purposes of security for members of Cabinet, visiting dignitaries, and special events. Where a special event requires a greater level of security than normal, the increased level will be provided by the OPP and OGPS. For the early days of the strike, as well as for 18 March, the OPP supplied a Crowd Management Unit, and an Incident Commander (Inspector Hope) to whom Staff Sergeant Hough and all of the police officers of the OPP deployed at Queen's Park reported.

Preparation by the Speaker's Office for 18 March

11. Much of the preparation in which the Speaker was involved for the OPSEU strike generally and for 18 March in particular was in fact planning by the LSS (particularly the OPP), who reported through the Sergeant-at-Arms. While some issues arose, such as mail delivery and provision of similar services, and were dealt with on an administrative level by those in the Office of the Assembly, questions of security appear to have been left almost entirely with the OPP. The OPP planning for the event is discussed in greater detail in Appendix D(2).

12. The Speaker saw his role as guardian of the privileges of the Members of the House, and was clearly sufficiently concerned about the possibility of access difficulties to have retained counsel on the subject as early as January. Despite this fact, there seems to have been surprisingly little actual communication between the Speaker and his charges. A security plan was developed by the OPP and approved by the Sergeant-at-Arms and subsequently the Speaker. Among the goals of the security plan was access to the House by Members, and yet, those Members were never made aware of either the contents or existence of such a plan, despite requests on the part of at least one of the party caucuses.

13. As part of the overall plan for security in the building, all doors to the Legislative Precinct, save for the east door of the Legislative Building and the north door to the Whitney Building were to remain closed and locked throughout the strike. As will be seen, this arrangement had ramifications on 18 March.

14. The closest that the Speaker appears to have come to communication on the subject of access prior to the strike is the production by the Executive Director of Assembly Services, Barbara Speakman, on 23 February, 1996, of a Bulletin for Occupants in the Legislative Precinct (which would include MPPs and essential staff). The Bulletin discussed a number of aspects of the impending strike, including how occupants should approach a picket line. The Bulletin used the following words:

In crossing the picket line, if there is one at the Legislative Precinct:

- * make your way through the line
- * do not take any comments or events personally
- * avoid provocation or confrontation with picketers
- * you may be expected to wait a short period of time before proceeding through the line - if so, wait calmly and avoid confrontation

15. Further instructions were given for those not deemed "critical" to the operation of Parliament, including instructions to go home if access could not be gained to the Legislative Precinct.

16. The fact that waiting a delay interfered with the right of Members to access the Legislature was not lost on at least the Progressive Conservative Caucus. Barbara Cowieson of that caucus raised the issue of access with the Sergeant-at-Arms during the early days of the strike, and was informed that, although blockage and delay were not permitted, MPPs were requested to respect the delay so as to maintain peace on the picket line.

17. Thus it appears that the Speaker's Office, at least through the Executive Director, Assembly Services and the Sergeant-at-Arms, was conveying the impression to those in its care that a delay prior to access was to be tolerated. The members of the LSS were apparently of this view as well, as OGPS members were cited as having told people that a fifteen minute protocol was acceptable.

18. That this message was also conveyed to representatives of OPSEU is beyond question. In addition to the simple observation that a delay was being tolerated on the picket line, OPSEU members would be sure to have seen and read the widely distributed Bulletin, as some of the recipients, including members of the OGPS, were also OPSEU members.

19. Despite this policy of tolerance which seems to have been requested or adopted, it is clear that not all MPPs accepted the imposition of a delay to their entry. The opposed positions must be considered to have stemmed in part from the lack of consultation with party caucuses, or MPPs individually prior to adoption of a tolerance policy. The end

result was that a number of MPPs were involved in incidents on the picket line in which they attempted to force their way through the line, with physical confrontation resulting.

20. When news of these confrontations reached the ears of the Clerk of the House on his return to the Legislature from a business trip on 14 March, the Clerk directed a letter to the OPSEU Local President at the Legislative Building, Don Sheppard. This letter expressed the Clerk's unhappiness with the imposition of delay, and stated that any attempt to impede access was unacceptable. The letter, which was copied to OPSEU President Leah Casselman, and to representatives of the three caucuses, was essentially the only direct contact between the Speaker's Office and OPSEU throughout the course of the strike.

21. From these various communications it can be seen that at best, the voice of the Speaker concerning the issue of access was not unified. Different people within the Office of the Assembly evidently took positions of differing stridency, depending on whether their outlook was based more on principle or pragmatism. The result was mixed signals, and a lack of clarity which led to conflict.

22. At some point during the week prior to 18 March, a representative of the MBS telephoned the Clerk in an attempt to co-ordinate efforts between the Speaker's Office and the Government of Ontario. True to the approach he was taking, the Clerk responded that the separation and independence of the Legislature from the labour dispute between OPSEU and the Government of Ontario meant that there was no need to co-ordinate efforts.

23. In response to new information about blockage, the LSS devised a bifurcated plan to get MPPs into the Legislative Precinct at 11:00 a.m. or 12:00 noon. The Sergeant-at-Arms was informed of this plan, and approached the caucus representatives to offer them the opportunity of taking advantage of it. The Sergeant-at-Arms testified that the NDP caucus stated that they did not want to hear the plan (although Dave Cooke of the NDP testified that this refusal did not take place), the Liberal caucus wanted to hear the plan, but did not expect to have to use it, and the PC caucus wanted to hear the plan.

24. Despite the fact that the Sergeant-at-Arms was aware that the plan would involve the use of the CMU, and that as much force as necessary would be used to ensure MPP access, he did not advise the parties to whom he spoke that this was the case. Given that the MPPs would be those escorted into the building, it seems to be a remarkable omission not to inform them that the escort might be using force, made all the more remarkable when one considers the testimony of Pat Sorbara of the Liberal caucus that she specifically told the Sergeant-at-Arms that Liberal Members were not interested in going through the picket lines with security if it would involve the use of force.

25. At approximately 7:15 a.m., the Sergeant-at-Arms arrived at the Legislature. Having discovered that a delay was being imposed at the east door, he south access through another door to the Legislative Building. In doing so, he was approached by a member of OPSEU, who carried a sheet of photographs, which was subsequently revealed to be a list of PC MPPs. After comparison to the list, the Sergeant-at-Arms was informed that he was "OK", and allowed into the building. While no further evidence disclosed the significance of the photo list, it is clear to the Commission that at least some members of OPSEU were taking a concentratedly discriminatory approach to access.

Activities of the Speaker's Office on 18 March

26. The Speaker and the Clerk met in the Legislative Assembly Building shortly after 9:00 a.m. They observed the build-up of the crowd and particularly the congestion of the only access to the Legislative Assembly Building at that time, the east door. This congestion was due to the stiffening of the picket line, in numbers and in actions taken. The consequence was the increase of delays imposed on the progress of those seeking access, including MPPs and the essential staff of the Legislature. At this point, however, the Clerk and the Speaker determined that the situation was not yet sufficiently grave to warrant seeking an injunction.

27. At around 9:30 a.m., however, after receiving reports of staff members having trying times in gaining access to the east door, including some assaultive behaviour on the part of those maintaining the picket line, the Speaker and the Clerk apparently agreed that the time had come when application should be made by the Speaker to the Ontario Court (General Division) for an injunction to facilitate access by MPPs and essential staff to the Legislative Assembly Building. The Sergeant-at-Arms and the Clerk therefore left Queen's Park at this time, and proceeded to the offices of their counsel, and then to court. The OPP was unaware of their departure, and remained unaware of the ongoing injunction proceedings throughout the day.

28. In testimony, the Speaker stated that his legal advisors had earlier advised him that it would be essential for the success of such an application that he and his staff demonstrate to the Court that one or more events had occurred which resulted in the blocking of access to the Legislative Assembly. The evidence before the Inquiry indicates that the east door of the Legislative Assembly Building was, by this time, being completely blocked at times, and being subject to delays of fifteen minutes and more at other times. Whether or not access had been completely blocked prior to 10:00 a.m., the evidence is clear that at least by that time the crowd had effectively shut down the movement of persons through the east door of the Legislative Assembly. Due to the locking of other doors for security reasons, this was the only point of access designated for the building, although Legislative Assembly staff had allowed people in through other points in the building earlier in the morning. As one access point was used and spotted, OPSEU would move

in to see that its next use was contested. A couple of ugly incidents occurred in this manner, involving verbal abuse, shoving, spitting and even biting.

29. From about 10:30 a.m. until 6:30 p.m., then, the Clerk and the Sergeant-at-Arms were in court, accompanied by counsel, for the presentation of the injunction application. The Executive Branch acting through counsel for the Attorney General of Ontario appeared before the same court for an injunction with reference to other buildings outside the Legislative Precinct at Queen's Park. The Court considered the Speaker's application first and at about 6:30 p.m. granted the request for an injunction. The Order, and the Reasons for Decision of Justice Winkler on this motion can be found at Appendix F(4). By this time, the demonstration by OPSEU was long over, having ended at about 2:00 p.m. Access was thereafter available, without restriction, through the east door and the entrances to the other buildings in the Legislative Precinct. The crowd had gone home.

30. Throughout the balance of the day after the Clerk and Sergeant-at-Arms had left to attend to the court application for injunction, the Speaker took no part in the activities of the LSS or the police. It is remarkable that the Speaker heard nothing from the OPP during 18 March about the progress of Members into the House and the difficulties which had been encountered in arranging for access by the MPPs to the Legislature. The OPP was, after all, the force under contract with the Speaker through the Memorandum of Understanding and this force had a long-existing channel of communication to the Speaker's staff. The Speaker's essential position was that the OPP had their instructions and mandate well before the 18th and required no direction or further authorization by the Speaker.

31. It is equally remarkable that the Speaker did not have any contact on 18 March with any of the three caucuses, through their leaders or otherwise, to discuss the situation. The reality is that the Speaker did not learn of the violence which occurred at the north end of the Whitney Block, and at the North Frost Building, until he heard of it in the House and saw the pictures of it at home on the television that evening. This was his testimony.

Critique of the Speaker's Actions during the Strike at Queen's Park

32. The Speaker and his staff share the burden of the failure to communicate obvious risks and hazards in the path of this oncoming and well-announced event. The assertion of the rights and privileges of the Speaker, albeit of ancient and historical origin, itself becomes a discordant element in the conduct of one phase of the government function in the course of this strike. The vigorous assertion of independence on the part of the Speaker from the other branch of government produced a serious isolation of the Speaker from the concurrent activities of the Executive Branch as the strike progressed. Knowledge does not necessarily entail involvement, but does produce co-ordination as between the branches without subservience or interference.

33. The aloofness of the Speaker as regards OPSEU doubtless sprang from a sincere desire on the part of the Speaker to distance himself from labour relations matters involving the executive and the union. This led to a gap between the Speaker and the union, which in turn led to a failure on the part of many union picketers to understand the basis for the Speaker's requirement of unimpeded access by MPPs to the Legislature. The Speaker's staff contributed to this confusion by issuing bulletins and a letter which contained conflicting instructions or requests to the union.

34. The separation from the Executive Branch and the vital need of the community for continuous and efficient functioning of the Legislative Branch was obvious to the Speaker, but would certainly be less obvious to the rank and file of the striking employees. Hence the need for communication and publication of the position being taken by the various participants in this strike. The limits on the right to picket around the Legislative Assembly Building, the prohibition of any restraints on access and egress of MPPs, and the size and nature of the forces intended to be deployed by the police, ostensibly under authorization stemming from the Speaker, should have been made known to all the parties before and during 18 March by representatives of the Speaker's Office.

35. These comments can apply to many other incidents which occurred on that day. The lack of information flow between the two police forces, the LSS, OPSEU, the leaders of the three caucuses and the Speaker, the Clerk, and the Sergeant-at-Arms might well have obviated the risk of anything approaching the resort to force by the authorities to ensure the entrance to the Legislature by the Members at or prior to 1:30 p.m.

APPENDIX D(2)

THE ONTARIO PROVINCIAL POLICE AND THE ONTARIO GOVERNMENT PROTECTIVE SERVICE

Structure of the OPP/OGPS at Queen's Park

1. The Ontario Provincial Police force is established under provincial statute and reports to the Solicitor General of Ontario. The Commissioner of the OPP has the duty and authority to guide, administer, and conduct the OPP in the discharge of its statutory functions. In a general way, the OPP is a provincially-maintained police force whose principal responsibility is the policing of regions of the province where, by reason of small population, the local community is unable to provide its own police protection. In addition to that duty, the OPP is responsible for the patrol of provincial highways lying outside the boundaries of those municipalities which provide their own police services. The OPP, like all other police forces in Ontario, is subject to the *Police Services Act*. This statute controls a number of phases of policing, including the system of disciplinary action and appeals. This Commission of Inquiry is not authorized to conduct an investigation into the conduct of police officers where such conduct would fall within the *Police Services Act* and its developing provisions.
2. The members of the OPP are represented in their employee relationship with the Executive Branch of government by a police association established by the OPP members and which is not affiliated with OPSEU. The Ontario Provincial Police Association was represented independently before the Commission.
3. Since 1973, Ontario government buildings across the province have been protected by a security service run by the Ministry of the Solicitor General, known as the Ontario Government Protective Service. This service replaced the combination of OPP officers and nightwatchmen who had previously protected these buildings. The members of the OGPS are not police officers, but are sworn in as "special constables" under the *Police Services Act*. In the downtown core of Toronto, there are at least approximately 159 OGPS officers who look after Ontario government buildings. These officers are members of the Public Service of Ontario and are included in the collective bargaining unit represented by OPSEU.
4. Since 1984, the year in which a gunman killed and injured staff members in Quebec's National Assembly, the OPP have maintained a detachment of six police officers in the Legislative Precinct, in order to respond with armed force if an incident so required.

5. The execution of a Memorandum of Understanding between the Speaker and the Solicitor General in 1992 transferred responsibility for security in the Legislative Precinct, which after expansion now encompasses the Legislative Building and half of the basement and the first three floors of the Whitney Block, to the Speaker. In order to effect the necessary division of security forces between the Legislative Precinct and elsewhere, the contingent of OGPS officers were divided into two groups. Fifty officers are posted in the Legislative Precinct. The remaining officers are assigned to the "Area Command", which encompasses the remaining buildings in the Queen's Park area, and also Osgoode Hall. OGPS personnel do not move between the two groups.

6. Part of the role of the OPP in the Legislative Precinct is now the management of the 50 member OGPS detachment. Combined, the six OPP officers and the 50 OGPS officers constitute the Legislative Security Service. On 18 March 1996, and in the period leading up to it, the OPP detachment, and hence the LSS as a whole, were headed by Staff Sergeant Allan Hough. Reporting to him was Sergeant Joe Mauti, and the service was completed by four OPP constables, and the 50 OGPS special constables.

7. In Area Command, the remaining OGPS officers, approximately 109, come under the direction of a single OPP officer, who at all relevant times was Staff Sergeant Dave Moores.

8. Both Staff Sergeant Hough and Staff Sergeant Moores reported upward to Inspector Jay Inspector Hope of the OPP. Inspector Hope in turn reported to Superintendent William Currie, the OPP's Regional Commander of the Greater Toronto Region. Inspector Hope had formerly been attached to the Legislative Precinct detachment and was thus familiar with the environment, but in September of 1995, had moved to OPP Headquarters in Aurora.

9. Due to Inspector Hope's familiarity with the surroundings at Queen's Park, his rank and his training with the OPP as an Incident Commander, he retained human resource responsibilities for the Legislative Precinct and Area Command, and returned to Queen's Park on occasion, when circumstances merited the involvement of a more senior officer or someone with sufficient training to deal with an unusual or threatening incident. 18 March 1996 was one such circumstance.

10. When warranted, the OPP would supply additional personnel under the MOU to ensure security. On 18 March 1996, these additional officers came in the form of OPP Crowd Management Units. These are specially trained OPP units which are each comprised of two Emergency Response Teams, typically working in tandem, although deployable individually. Each ERT in turn is made up of two squads, each of which has 8 officers, including the squad leaders. A CMU as a whole thus consists of 32 officers. As CMUs are not needed on an everyday basis, the members of these teams are called out from detachments across the Greater Toronto Region and the Province, to serve with the

unit as required. The ability of these officers to come together from disparate locations and work as a team is enhanced by the OPPs method of uniform training.

11. There were two CMUs present on 18 March 1996, one from the Greater Toronto Region, and one comprised of officers from the Central and Eastern Regions of the OPP. The CMU was under the direct authority and control of the senior officer of the OPP at Queen's Park during these events, Inspector Hope. The commanders of the GTR and combined CMUs themselves on 18 March 1996 under Inspector Hope were Staff Sergeants Robin McElary-Downer and Jerome Meinen. Under Staff Sergeant McElary-Downer were two Sergeants, McDonald and Hebblethwaite, who led the ERTs within the CMU. The Commission heard testimony from Regional Commander Currie, Inspector Hope, Staff Sergeant Hough and Staff Sergeant McElary-Downer, as well as from Superintendent Paul Shrive from the OPP training academy in Brampton.

12. Another chain of command in the Legislative Precinct arose from the fact that the LSS was under the purview of the Speaker's Office. While still an OPP officer, reporting through Inspector Hope to Regional Commander Currie, Staff Sergeant Hough also reported to the Speaker, via the Sergeant-at-Arms on questions of security, and via the Executive Director of Assembly Services on administrative matters. Similarly, when Inspector Hope was deployed in the Legislative Precinct, he also reported through the Sergeant-at-Arms to the Speaker. The Speaker's Office was more than notional head of the OPP detachment, often making requests or giving direction on operational matters. The Speaker's Office required, for example, that the OPP officers in the Legislative Building be in plain clothes rather than uniform. Further, when the CMU was deployed at Queen's Park in case of incident, the Speaker required them to be ensconced in the basement of the Whitney Block, lest their garb discomfort workers and visitors in the Legislative Precinct.

13. Finally, within the MOU, the OPP provides personal security for members of Cabinet and visiting dignitaries as needed. The MOU states that when this security brings the OPP into the Legislative Precinct, the OPP is to notify the Speaker's Office. Outside the MOU, the OPP also provides security for the Premier and the Lieutenant Governor. The treatment of the Legislative Building as the domain of the Speaker's Office is demonstrated by the fact that where OPP officers carrying on police functions outside the MOU wish to enter the Legislative Precinct, they are required to seek the permission of the Speaker to do so.

Alleged Conflicts of Interests in the OPP re OPSEU

14. The picture is further complicated by the fact that other than the six OPP officers, the officers of the LSS under the Speaker are members of OPSEU, and are managed by the OPP. Difficulty then arises when OPSEU is in a strike situation, as security for the Legislative Precinct during the strike must be provided in part by members of the striking

union. Further, the remainder of the security and policing duties are provided by the very people who are considered "management" to those striking security members. There is a structural difficulty inherent in the OPP performing both this role and acting as an impartial police force without any interest in the outcome of the strike.

15. A further potential conflict of status arises from the fact that the OPP were performing the role as a police force on behalf of the Government of Ontario. Again, the difficulty lies in the situation of the various parties when the labour dispute involves the public service. The OPS members of OPSEU are employed by the Government of Ontario, through its various ministries. The OPP is also employed and connected, at least notionally, to the Government of Ontario through the Ministry of the Solicitor General. The result is that the entity who is the employer, can be seen as employing its own police force, who may be policing the very picket line which is directed at them. Counsel for OPSEU put forward strong submissions about the appropriateness of this relationship.

16. In part, this potential for conflict is inevitable. The OPP are a police force with jurisdiction throughout the province, and will continue to be so. Therefore, whenever policing is required for labour relations disputes between the Ontario government and its employees, the OPP will be present, and the conflict arises. The connection between the OPP and the Solicitor General is for the most part administrative, and while policing guidelines are produced by the Solicitor General which are applicable to the OPP, pains are taken to ensure independence of the police force in the actual performance of their duty. Further, police officers are always subject to the common law principles of duty and independence from the state, which are discussed more fully in Appendix E(3).

17. With these considerations in mind, the question of conflict of interest between the different roles of the OPP falls away. Further, there was no evidence to suggest that there was actual conflict in the minds of any of the parties on 18 March, or that this potential for conflict affected in any way the conduct of the parties, or the outcome of the day.

18. It is hoped that some of the issues which arise with respect to conflict arising from members of OPSEU protecting the Legislature from other members of OPSEU will be addressed through the recommendations of this Commission. Conflicts arising due to this arrangement outside Queen's Park are outside the mandate of the Commission, and the Commission did not hear sufficient evidence to be able to address the point.

Preparation by the OPP/OGPS for 18 March

19. Under the MOU, the OPP/OGPS are required to make a report to the Speaker if requested with reference to any special incident or occurrence within the Legislative Precinct. Such a report was occasioned by the Throne Speech incident at Queen's Park on 27 September, 1995. The demonstration, according to the report, involved some five thousand persons on the front lawn of the Legislative Assembly Building. In the ensuing

violence at the south door, the barricades were dismantled and relentless efforts made by the crowd to enter the building. Metro officers, who had been policing the demonstration outside the building, held off the crowd for over an hour, and the disturbance was finally quelled.

20. From this experience, the OPP submitted to the Speaker some "Security Recommendations" for Queen's Park. These recommendations related to the need for permanent barricades, a wrought iron fence outside the south-east and west doors of the Legislative Assembly Building, and shatterproof glass and proper locking mechanisms on these principal doors. More formal arrangements between the Assembly and Metro were also recommended.

21. As a result of this unfortunate incident, on 19 October, 1995 Regional Commander Currie of the OPP sent a draft informal agreement to Deputy Chief Molyneaux of Metro concerning security at the legislative grounds. The letter indicated that the OPP would create an Entry Control Unit of 10 OGPS officers to patrol the area just outside the Legislative Building. It was hoped that this unit would help provide a consistent response to most smaller demonstrations, and aid in preventing the recurrence of the situation experienced on 27 September, wherein Metro officers patrolling this area were stuck against the locked door of the Legislature. The letter continued that the OPP would deploy an ERT to support this Entry Control Unit for mid-sized demonstrations where sufficient notice made this possible, and would assist Metro in providing for a combined effort for major demonstrations.

22. In his annual report under the Memorandum of Understanding with the Speaker, dated 19 December, 1995, Inspector Hope paid particular attention to the need for and the difficulties in supervising general public access to the public galleries in the Assembly. The Inspector reiterated the recommendations made after the Throne Speech incident, as mentioned above. He further described the difficulties of providing security to members of government with offices in the Whitney Block when the Speaker's jurisdiction extended only to the third floor.

23. Appended to the Inspector Hope letter was a "Contingency Plan" for the eventuality of a strike, forwarded to Inspector Hope by Staff Sergeant Hough. The plan was concerned mainly with the delivery of security services by OPP/LSS in the event of a work stoppage by members of OPSEU. Staff Sergeant Hough raised issues regarding staffing requirements in the face of a legal strike and access doors to the Legislative Assembly Building and Whitney, as well as the tunnel location connecting Queen's Park with the TTC subway. He foresaw the precise need to permit MPPs and essential staff access to the building, and that the latter "must be granted entry to the building regardless of picket lines ..." to ensure that Parliament business continued. He concluded with reference to the possibility of a legal strike by OPSEU, with the observation that Metro had made a commitment to provide support "should we require their immediate assistance"

24. The specific planning by the OPP for security in the event of an OPSEU strike commenced on or around 5 February, 1996. On that day, Inspector Hope led a team of sergeants in a discussion of an emergency response team pre-plan. The sergeants included Staff Sergeants Hough and Moores and Sergeant McDonald, an ERT team leader. That meeting discussed a three-tiered plan that had the CMU present at all three tiers. There was no discussion or consideration at that time about contacting OPSEU with respect to security planning. In the result, the OPP did not have any contacts with OPSEU either in the period before the strike or during the strike with respect to either general planning or March 18, 1996 in particular.

25. Even as early as this meeting, Inspector Hope considered that a demonstration where OPSEU would try to prevent everyone, including MPPs, from entering the building was a distinct possibility, based upon previous events at Queen's Park, and his experience of crowd and human behaviour. After the meeting, Inspector Hope had Sergeant McDonald generate a draft security plan in SMEAC form (named after the headings in the document).

26. As the likelihood of an OPSEU strike increased, there was a meeting of Metro, the OPP and Peel Regional Police at the OPP Academy in Brampton on 8 February, where Metro and Peel jointly gave a presentation on labour disputes and the police role and responsibilities. It was clarified at this meeting that the Municipal Police Services would have responsibility with respect to government buildings and that the only building security responsibility for the OPP within Metro Toronto would be inside Queen's Park.

27. OPP officers met with Metro again on 13 February, 1996 to discuss the potential strike. The contents of that meeting are dealt with at length in the main body of this report, so the details are not repeated here.

28. Staff Sergeant Moores, in his capacity as head of Area Command, also attended a meeting with Metro and ORC representatives on that day, to deal with strike planning for the other buildings in the Queen's Park complex. At that time, there was a discussion of the fact that there would be picket lines at a number of facilities including Queen's Park where picketing activities were also expected to target the Legislature. At that meeting the police forces discussed the approach to Queen's Park as being the standard policing policy for labour disputes.

29. Another meeting took place between the OPP and Metro on 20 February, 1996. At that meeting, Metro's proposed tiered response, including the potential use of the Metro POU was discussed. There does not appear to have been any discussion of the SMEAC security plan at the meeting. There do not appear to have been any further planning meetings with Metro prior to 15 March, 1996.

30. The SMEAC document was presented to the Sergeant-at-Arms on 20 February, 1996. On 21 February, Staff Sergeant Hough met with the Sergeant-at-Arms in the morning to discuss the document. There was then a larger meeting with Staff Sergeant Hough and five people from the Speaker's Office including the Speaker, the Clerk and the Sergeant-at-Arms. Staff Sergeant Hough presented the security plan including the tiers and the proposed use of the CMU. The security plan was approved by the Speaker. It is clear that for the Speaker's Office and the OPP, the principal requirement regarding the strike was the continued functioning of the Legislative Assembly. While no-one was interested in risking lives, it was critical that the Assembly continue to operate. Already, the Speaker's Office and the OPP were thinking about the opening of the House on 18 March.

31. At the same meeting, the parties discussed the bulletin which was to be sent to occupants of the Legislative Precinct which advised that occupants wait or accept a delay before crossing the picket line. There was no discussion at this meeting about potential for confusion between this bulletin and the security plan that was being discussed, drawn up to effect access of MPPs.

32. There do not appear to have been any further top-level discussions between the OPP and the Speaker's Office in the early stages of the strike, although the CMU was present 26 February to 28 February, 1996, for the first three days of the strike and later on 8 March in response to a planned demonstration. During these days, the CMU was housed in the basement of the Whitney building and was not deployed outside.

33. Throughout the course of the strike, both the Speaker and the OPP knew that the picketers were on occasion requesting, or even attempting to impose, a delay on persons seeking access into the Legislative Assembly. OPP plain clothes officers attached to the LSS went out to provide assistance on occasion starting on 7 March, 1996, as there were a number of pushing and shoving incidents beginning on that date. There does not appear to have been any discussion between senior officers of the OPP and the Speaker as to what was intended for March 18 or what, if anything, should be done in reaction to these delays.

34. The Commission heard testimony to the effect that the 15 minute delay imposed by OPSEU was being positively condoned and accepted by officers of the LSS.

35. On 14 March, 1996, Inspector Hope and Superintendent Currie received hard and reliable intelligence from the Regional Intelligence Co-ordinator ("RIC") of the OPP. However, despite the fact that the same officer provided the information to the two, they ended up with different understandings as to what was to be expected for 18 March. Inspector Hope understood that a plan was afoot that nobody, including the police, was going to get into Queen's Park on March 18 and that persons would use violence to

achieve their objectives. Inspector Hope understood that this referred to a variety of groups including OPSEU and the Ontario Coalition Against Poverty.

36. Regional Commander Currie's understanding of the intelligence was that it was not expected that the violence would be emanating from OPSEU, but rather from other groups, and that it might even be directed toward OPSEU. Based on this information, he arranged for Inspector Hope to set up a meeting with Metro, but did not contact OPSEU, or ensure that they would be contacted, assuming that Metro would fulfil this role, based on their ongoing relationship with the Union.

37. It does not appear that the OPP were consulted or even aware of the Clerk's letter of 14 March to Don Sheppard of OPSEU, although they had been made aware as early as February 21, 1996 that the Speaker was researching and considering obtaining an injunction.

38. On 15 March, Inspector Hope met in the morning with Staff Sergeant Hough. Inspector Hope relayed the intelligence information which had been received, as he understood it. It was clear in the minds of both officers that there was a potential for violence on 18 March. To respond to the expected demonstration, Inspector Hope and Staff Sergeant Hough devised a plan for March 18th to supplement the SMEAC plan, based on the intelligence that had been received on the 14th. The plan called for MPPs and staff to be into Queen's Park before 7:00 a.m., in order to avoid picket lines altogether. If not in by this time, they would be met at a parking kiosk on the south lawn of Queen's Park, by a plainclothes OPP officer, wearing an OPP armband, who would try to find doorways that were not obstructed.

39. If there were still need for further assistance with access, then at 11:00 a.m., members of the PC caucus were to show up at the south Whitney doors. Once there, they could walk in through that entrance if unobstructed, or would enter with the assistance of the CMU if there was blockage. A similar plan was to be implemented for NDP and Liberal caucus members at 12:00 noon, at the rear of the Frost building.

40. South Whitney was chosen as it was a door that had been locked throughout the strike and was not being picketed. Inspector Hope distinguished between Conservatives and others as he understood that the focal point of any activity would be against the Conservatives. This plan was not reduced to writing.

41. Inspector Hope and Staff Sergeant Hough met with the Sergeant-at-Arms later that morning. Inspector Hope did not inform the Sergeant-at-Arms of his intelligence as to the potential for violence. The over plan for the day was discussed, including the 11:00 a.m and 12:00 noon plans. The Sergeant-at-Arms indicated to the Inspector that neither the Liberals nor the NDP had expressed interest in strike planning with the OPP.

42. During a later meeting with the Clerk and Sergeant-at-Arms, the Clerk advised the OPP officers that he anticipated seeking an injunction on 18 March if his own way was impeded.

43. At around noon, the Sergeant-at-Arms called Inspector Hope and Staff Sergeant Hough and informed them as to the reaction of the party Whips concerning the plan. The Sergeant-at-Arms relayed that the PC caucus wanted to hear the plan and would abide by it, the Liberal caucus wanted to hear the plan but would not abide by it, and the NDP caucus did not even want to hear the plan. The OPP was not advised that the Liberal Caucus did not want to be brought across the OPSEU picket line by the use of force. The call around noon appears to be the final contact between Staff Sergeant Hough and Inspector Hope and anyone in a position of responsibility in the Speaker's Office before 18 March 1996.

44. The weekend for the OPP was taken up with calling out members of the CMU for 18 March, and ensuring that logistically everything was in place for the Monday. It appears that a number of members of the CMU called out for 18 March had not received their full CMU training. However, all the members of the two ERTs had received emergency response training.

Activities of the OPP/OGPS on 18 March

45. On 18 March, of the OPP and OGPS forces at Queen's Park were under the command of Inspector Hope. These forces included OGPS and OPP officers members in the Legislative Precinct and those in the Area Command, plainclothes officers deployed outside the buildings of the Legislative Precinct, and finally, the CMU referred to above, under the command of Staff Sergeant McElary-Downer. The CMU was headquartered in a print shop located in the basement of the Whitney Building, deliberately out of sight of the public, and subsequently was re-deployed to various locations in the Whitney Building, the McDonald Complex, the TTC tunnel, and the Frost Buildings. The CMU was deployed outside the buildings four times in the course of the day in order to escort MPPs and essential staff into the Legislative Assembly.

46. The first important event of the day from the OPP perspective was that in or around 5:30 in the morning, Inspector Hope briefed the OPP personnel. He explained that the focus of the OPP's mission was to ensure that the business of the House was conducted; that MPPs, essential service workers and to a lesser extent visitors had to be able to get in to the building. Based on his understanding of the intelligence provided by the OPP, Inspector Hope also advised his personnel that OPSEU and related organizations intended to keep everyone, including the police, out of the Queen's Park buildings during the course of the day and would use violence to achieve this.

47. As part of this briefing, Inspector Hope stressed the importance of MPP access, and advised that they would be using as much force as necessary to ensure that Members got into the building. Inspector Hope briefed the OPP personnel on some of the scenarios that they would encounter throughout the day. He thought that the subway tunnel area would be a focus early in the morning and he also took the OPP personnel present through the 11:00 and 12:00 plans, as well as the overall plan for the day. At this point, and indeed throughout the day, the OPP remained unaware that the event was scheduled to be over at 2:00 p.m.

48. At about 7:00 a.m., a number of members of the Steelworkers attempted to gain access to the Queen's Park tunnel system via the TTC subway access point. A squad of the CMU was called to prevent their entrance. After some pushing and shoving, the CMU secured and locked the door to the tunnel so that that access point was shut for the day.

49. It appears from all the evidence that access, albeit delayed access, was being obtained at the east Legislative door until at least 9:30 a.m. Certainly, as shown in the videos, trains of MPPs, including PC MPPs, and essential staff were obtaining access in this manner in up until 9:00 a.m.

50. At approximately 8:10 a.m., the Hon. Al Palladini, Minister of Transportation, drove to the south lawn and then attempted to walk to the east door and walk in. When he attempted to proceed up the south stairs of the east door, he was denied access by picketers and picket captains. An OPP intelligence officer was with him at this time. Mr. Palladini returned to his car, which was escorted from the scene by the OPSEU security marshalling team. At about the same time, the Solicitor General, the Hon. Robert Runciman, arrived at the east door on foot and, after taking a view of the scene, decided that access would not be possible and that he would not attempt to get in.

51. Inspector Hope did not observe the east door and what was occurring there directly, but information from Staff Sergeant Hough. At around this time, Inspector Hope learned from Staff Sergeant Hough that a number of MPPs required access, that the doors were blocked, and that people are being jostled, pushed about and assaulted. In short, that MPPs were being denied access. Inspector Hope determined to use the CMU to get these MPPs in, and the rear entrance to the South Frost building was chosen as the access point, despite its being outside the Legislative Precinct. At around 8:30 a.m., one squad of the CMU was deployed outside the rear of the South Frost building. The CMU were in full Hard Tactical Dress, which includes protective guards, helmets, visors, shields and batons. At that point, there were roughly four or five protestors at that location, and three to four MPPs gained access through the CMU created cordon. Staff Sergeant McElary-Downer was not outside on that occasion but was informed by Sergeant MacDonald, the leader of the deployed squad, that "It's nuts out there".

52. About 15 minutes later, at 8:45 a.m., the CMU was deployed outside the rear of the South Frost building again, for the same purpose. This time the CMU deployed two squads, and a photo shows that Sergeant Easterbrook was also outside with the two squads. On this occasion, Staff Sergeant McElary-Downer was out with the squads and the deployment was also observed at a distance by Sergeant Pearson of Metro. This time, there were approximately ten demonstrators. There was pushing and shoving when the CMU encountered the demonstrators. One protestor rushed a CMU member with a picket sign raised above his head, but was stopped by the officer through the use of his shield. Once again three to four MPPs obtained access in this manner.

53. Sergeant Pearson, Staff Inspector Watson and another Metro officer entered the building shortly thereafter and sought out Inspector Hope, as they were concerned about the deployment of the CMU and the conduct of an OPP plain clothes officer. Shortly after the discussion began, Inspector Hope learned that there were some 35-40 MPPs and essential staff walking in a group towards the door, where there were increasing numbers demonstrators. In response, Inspector Hope prepared to deploy the CMU again. At this point, Sergeant Pearson asked Inspector Hope not to deploy the CMU, but to give Metro a chance to see what it could do. At that point, the Metro officers went outside and spoke to the crowd of demonstrators. They informed them that a crowd of MPPs was arriving and asked them to step aside. The crowd complied, and the MPPs and essential staff gained access, although not without the occasional cat-call. Staff Inspector Watson and Sergeant Pearson re-entered the building and had a further discussion with Inspector Hope. In response to Metro's observations concerning how this approach had worked, and requesting its use again in the future, Inspector Hope replied that the point was taken.

54. As a result of this conversation, confusion had begun to set in. Inspector Hope of the believed that Metro had "taken the lead" for the 11:00 a.m. and 12:00 noon plans. Metro, on the other hand, had no awareness of "taking the lead" for those particular times or plans. At some point around this time, Inspector Hope spoke to Superintendent Parkin, and it was at least confirmed that that the 11:00 and 12:00 plans were still in effect.

55. The events at Frost South were over shortly after 9:15 a.m. Inspector Hope was then called on several occasions for reports that demonstrators had got inside the building and as the Premier attempted to obtain access to the building. The Premier had some difficulty, but ultimately got in, after being jostled, at around 9:45.

56. There appear to have been a number of unsuccessful attempts by senior Metro personnel to get hold of Inspector Hope throughout the course of the day. Not only was Inspector Hope very busy and on his phone to his own people often, but in addition in some places in the building, especially in the tunnels, there were dead spots where cell-phone and radio communication was not possible (see Appendix C).

57. In or around 10:00 a.m. to 10:30 a.m., Inspector Hope was with the CMU, dealing with a number of reports of alarms and protestors entering the Hepburn Block. CMU squads were dispatched to various places, but with respect to the Hepburn Block, it appears that by the time the CMU were deployed the demonstrators had left the building.

58. Meanwhile, the OPP officers on the south lawn had a number of MPPs with them. The MPPs standing by the kiosk in plain sight were attracting the attention of a large number of demonstrators and the OPP personnel outside were growing increasingly uncomfortable. The radio transmissions at that point indicate that one OPP officer felt that he was about to have to call a 10-78 (officer in need of assistance). Metro Area Foot officers, including Staff Inspector Watson and Sergeant Pearson, attended at the scene to assist the OPP plainclothes officers.

59. The OPP and others standing around on the south lawn understood that they were to go to South Whitney at 11:00 a.m., in accordance with the previously defined plan. At around this time, then, the group of MPPs, Metro Area Foot officers and OPP plainclothes officers began walking from the south lawn across the street to the south Whitney stairs. A group of demonstrators divined their destination and occupied the stairs in front of them. The group of MPPs got part way up the stairs when they were blocked and a stalemate ensued. There were large numbers of people on the stairs at this point, and the demonstrators were chanting. It was not a pleasant or safe situation.

60. Meanwhile, inside the South Whitney, Inspector Hope had mustered the CMU to the South Whitney door just before 11:00. His view of the scene, as well as that of Staff Sergeants Hough and McElary-Downer, was obstructed by the demonstrators at the south Whitney door. They could not see what was happening outside, although they could hear the rather loud noise of the demonstrators. Inspector Hope was anxious at this time for the safety of the MPPs and the Metro and OPP officers. He contacted Superintendent Parkin directly and asked him whether Metro needed assistance. On one occasion Inspector Hope, stated that he was considering releasing his CMU and asked Superintendent Parkin whether they would be required. The Metro Superintendent declined their assistance, and the CMU was not deployed. There was also a discussion over the radio to the effect that Metro would deploy a portion of its POU. Metro indicated that they would be deployed, but ultimately this did not occur.

61. The result was that the MPPs did not gain access through the doors at the south end of the Whitney building, and after standing for five to ten minutes on the stairs, they were removed and placed by Metro officers in marked Metro Police vans. The Metro vans then left the area.

62. At this point, at or around 11:15, Inspector Hope left the South Whitney building to find out what was happening. He encountered Sergeant Pearson and asked him where the MPPs were and what the plan was. Sergeant Pearson replied that they had been taken

away in vans and as far as he knew there was no plan yet as to how to get them in. Inspector Hope says that in light of this information, and in the absence of a plan, he "took the lead back". A plan was devised between Inspector Hope and Sergeant Pearson wherein Metro would implement a diversion at the south end of the Whitney Block, while Inspector Hope and the OPP would escort the MPPs in via the north end. The north end of the Whitney building was chosen as it appears to have been reasonably free from picketers and protestors at the time.

63. The officers agreed that Sergeant Pearson would implement the diversion in 15 minutes, at 11:30. Inspector Hope was outside and communicated his plan back to Staff Sergeant Hough by radio. Staff Sergeant McElary-Downer, although she did not have any discussions with Inspector Hope directly, heard Inspector Hope's instructions to Staff Sergeant Hough.

64. Inspector Hope wanted the CMU to arrive at the head of the drive way at the same time that the Metro vans did, remove the chain that would otherwise impede access and whisk the MPPs out of the vans and down the driveway before the demonstrators had a chance to react. Right away things went wrong. A few minutes after 11:22, Staff Sergeant Hough went outside with his bullhorn to talk to the crowd. Thinking this was their cue, the CMU followed him out almost right to the top of the driveway, to discover that there were no vans there.

65. In addition, no one had the key to remove the chain. At or around the same time, the Metro vans with the MPPs in them were split. One van was on Wellesley west of Queen's Park Crescent, while the other had driven through the lights and was waiting on the east side. One of the MPPs climbed out of that van and waved back to the other van. At around the same time, a Metro van drove past the Wellesley ramp with its lights flashing. As a result of these factors, the crowd that had been drawn to south of the building by the Metro diversion began to stream north.

66. There is little doubt from the videotapes that Staff Sergeant Hough, through his bullhorn, sought the co-operation of the crowd and received a resoundingly negative response. It is equally clear that he did not frame what he was saying in terms of a warning as to the use of force or as to what the consequences of non-compliance would be.

67. At about the same time, on this first occasion that the CMU was out on the ramp, Staff Sergeant McElary-Downer approached a picket captain and asked her if she would get her group to move as vehicles and persons were to be brought in. The picket captain replied "No, I don't think we can do that".

68. In response to this, Staff Sergeant McElary-Downer turned and ordered her CMU to fan out, intending to show the crowd the force behind her. She intended then to have

a further conversation with the picket captain as part of her use of a theory of the gradual application of force. However, after ordering her team to spread out, she turned back to the picket captain to find her gone. Before being able to relocate the picket captain to engage in a further conversation, she was informed by a team member that the order had been given to withdraw. She and the CMU retreated back down the ramp, and the intended second conversation with the picket captain therefore never occurred. Staff Sergeant McElary-Downer did not advise Inspector Hope of the steps she was taking at this point, nor did she have any direct communication with Inspector Hope about her intention to have communication with the demonstrators or in any regard with respect to this deployment.

69. The CMU at this point waited outside for about five minutes, around the corner in the ramp, out of sight of Wellesley Street, but in full view of protesters gathering on an embankment at the south end of the ramp. When the vans were finally co-ordinated and Inspector Hope gave the order to proceed, the CMU returned back up the ramp quickly. The CMU did not pause at all before stepping over the chain and opening a path in the line that the demonstrators had formed on the sidewalk side of the chain. The reactions of individual police officers in their assessment of the use of force continuum is not part of the mandate of this commission. It is sufficient to say that the efforts to open a path degenerated into a violent melee. The pushing and force used by the CMU was met with non-compliance and physical resistance by protestors either not moving or pushing back. This was in turn met with the use of batons by the CMU and injuries to picketers resulted.

70. The MPPs were brought in before a solid cordon was established, through the midst of the pushing and shoving. It was a confused and volatile situation, no doubt very frightening for all concerned. During this time, one of the picketers received a baton blow to the head, which appears to have connected during a CMU member's back-swing. The picketer fell to the ground, bleeding. After the MPPs were in, and while the CMU was still engaged for a number of minutes ensuring the safety of the fallen picketer, a picket sign was thrown by one of the demonstrators, striking Sergeant Easterbrook, who appears to have been present and involved in all the deployments. This resulted in a reaction by the CMU going into the crowd and further using of batons. After some delay, the CMU withdrew back down the ramp, and inside the Whitney Block.

71. After the CMU was withdrawn inside the Print Shop, Inspector Hope had a brief telephone discussion with Regional Commander Currie wherein he advised him of the successful deployment of the CMU and the injury to one of the demonstrators. Inspector Hope also spoke briefly with the team to ensure that everyone on the CMU was all right. He then directed Staff Sergeant Moores to find another location to bring the balance of the MPPs into Queen's Park, where a similar situation would not have to be repeated.

72. It appears from the OPP radio log that between 12:00 noon and 12:30 p.m., Metro tried unsuccessfully to raise Inspector Hope. Inspector Hope did not talk to Metro from

the withdrawal of the CMU until about 12:30 or 12:45 p.m. During that period Inspector Hope did not have any discussions with anyone from the Speaker's Office or any MPPs. Again, Inspector Hope did not give any consideration to trying to contact OPSEU himself. After Staff Sergeant Moores suggested the North Frost Building as an access point, Inspector Hope instructed the CMU to paper over the windows, so as to hide their presence, which may have inadvertently been a contributing factor to people knowing the CMU were there.

73. There followed at 12:45 p.m. a series of phone calls between Inspector Hope and Staff Inspector Taverner. By this point Metro had been approached by the security marshals of OPSEU, who were offering their assistance in getting the MPPs in to ensure that there was no repetition of the scene at North Whitney. Staff Inspector Taverner called Inspector Hope and advised him of the marshals' offer to assist. Inspector Hope declined at that time, stating that he did not want to disclose the location that was being used. Staff Inspector Taverner told Inspector Hope that the marshals already knew the location anyway. Staff Inspector Taverner also told him about the marshals' suggestion of using an underground garage for access, but Inspector Hope replied that it could not be used as the OPP vehicles were in that garage, and the doors were secured electronically or mechanically and could not be opened. There was then a further discussion about using the marshals and Inspector Hope eventually agreed to allow the marshals to assist in getting the MPPs in.

74. Inspector Hope left the conversations with the impression that the marshals would be present to assist the CMU in the creation of a cordon to ensure the entrance of the MPPs. He did not see the plan as involving the marshals only. Metro and the marshals, on the other hand, as discussed in Appendix D(3), thought that the marshals and Metro would be effecting the entrance.

75. Inspector Hope expected the Metro vans to arrive shortly after 1:00 p.m. As 1:30 p.m., the time for the opening of the House, approached, Inspector Hope's concern grew. However, during this period, there was no communication between Inspector Hope and Staff Inspector Taverner or anyone else at Metro.

76. Shortly before 1:30 p.m., members of the CMU discovered that the doors leading out from the North Frost Building had been blocked, and tied together with ropes. With the assistance of Metro Area Foot officers on the other side of the door, these obstructions were removed. During this time, Staff Sergeant Hough spoke on his bullhorn from behind the door, requesting that the crowd stand back. The obstacles to opening the door were removed at about the same time as the Metro vans arrived, and at this point, the CMU left the building to create a cordon. Staff Sergeant Hough was first out the door, and repeated his request for the crowd to move back. However, Staff Sergeant McElary-Downer, who came out of the door right behind Staff Sergeant Hough, testified that she did not hear what Staff Sergeant Hough was saying. The crowd, in light of the noise being generated

by the demonstration, evidently did not hear Staff Sergeant Hough's words, and would not have got a sense of what was going to happen next, even if they did.

77. There does not appear to have been any communication or opportunity provided for the crowd to withdraw. Again, it must be remembered that the assessment of individual police action is not the province of this Commission. The CMU created an effective cordon from the Metro vans on Grosvenor Street to the North Frost doors. The marshals arrived shortly thereafter, and assisted the CMU on the east side of the line. The east side was less confrontational. On the west side, the CMU used batons and pepper spray. The MPPs exited the first van out of the driver's side door. The van pulled away, and the second van pulled forward. The cordon was expanded at this point to enable the MPPs to exit from the sliding door on the other side of the vehicle. By this stage, a Metro POU was deployed in with the crowd to assist the CMU. The Metro did not have their batons out or in use.

78. MPPs were debussed from the second van, and finally from a red car which was in the crowd in front of the vans. The CMU withdrew back into the building, and the POU withdrew to the east, leaving the crowd chanting at the closed North Frost Doors.

79. At a joint debriefing, held at Metro Headquarters at 2:30 p.m., Metro and OPP officers expressed their concerns about what had gone wrong during the day. The minutes of that meeting, and the testimony of the witnesses that were there, suggest unanimity on the part of the parties that communication was not what it should have been, and that a joint or single command post was recommended for similar future events.

Critique of OPP/OGPS Actions During the Strike at Queen's Park

80. Lack of communication pervades the OPP's approach to 18 March. Many of the difficulties experienced on that day, which led to the incidents of violence seen in the evidence, could have been reduced or eliminated through effective communication with the various parties present at Queen's Park.

81. Inspector Hope's avowed mission for the day was the execution of the direction from his superiors in the Speaker's Office to escort all MPPs safely into the Legislative Assembly before the opening of the Session at 1:30 p.m. This mission was not effectively communicated to Metro, the other force present on the day, with the end result that the efforts of the OPP and those of Metro were not fully co-ordinated. Further, this mission and the ends to which the OPP would go to carry it out was not communicated to OPSEU, the group who would be most affected by it.

82. Lack of communication was even seen between the OPP and the Speaker, who was ostensibly in control of security. Valuable intelligence information received in the week before the event was not passed on to those in the Speaker's Office who should have

known of it. In the event, the Clerk of the House proceeded to court late Monday morning with an application for an injunction to restrain OPSEU members from blocking or delaying access by the MPPs into the Legislative Assembly. In doing so, he was without the benefit of any of the information concerning the intelligence officer's report of impending violence which had been in the hands of the OPP since 14 March. The injunction was not issued until 6:00 p.m., four hours after the demonstration had ended. It cannot be said categorically that such information would have assisted the Speaker in the application, but it is fair to assume that with affidavit information from the intelligence officers, the injunction may well have been obtained as early as 15 March.

83. Through it all lies the basic difficulty of having a security force under the authority of the Speaker with police officers included in that force. The structure included a police force for the area inside the Legislative Precinct but outside of the buildings and another police force for Queen's Park outside of the Legislative Precinct. It was a somewhat cumbersome, awkward, and inefficient structure. At least one force may have had a conflict of interest concerning some of its employees who were within the collective bargaining unit.

84. Further, a single commander was not present in a single command post during the day of crisis. The result could be foreseen. The detailed operation of safe conduct of MPPs was not precisely outlined with duties assigned. The link or liaison between the police and OPSEU was an informal exercise and in the end substantially ineffective. Most of these difficulties can be addressed with a single office in command of all elements from the planning stage to the execution.

85. Above all, the difficulties of both forces stem from the incomplete initial planning. The plans involved settled matters only in general terms. Precision planning was perhaps impossible given the different structure, training, and culture of the two large police forces involved. Again, at the planning stage, matters would have progressed quite differently had there been one general commander for the whole planning stage and for any ensuing public service strike.

86. The two incidents involving most of the violence seen on 18 March, at Whitney North and Frost North, entailed the use of the CMU to establish a cordon through which to pass the MPPs. In both cases, the crowd did not appear to have been adequately warned of intended police action or the police forces to be used for the execution of the proposed plan. Adequate warning of the requests of the OPP, and the consequences of non-compliance may well have avoided the resort to the use of force, and would at least have allowed the protestors to make an informed decision as to whether to continue their actions.

87. During these incidents, the police appear to have failed to take into account the fact that the crowd did not have room at the access points to manoeuvre out of the way. The

CMU were again without detailed knowledge of what the situation was outside the door from which they were proceeding in time to decide how the crowd should be moved aside with the least risk of opposition. It is only by fortune that the deployments did not produce more serious injuries.

88. In addition, it appears that the CMU appears to have been treating the crowd at the top of the North Whitney ramp as an extension of that found blocking the east door of the Legislature. Not only did this group contain different individuals, but it was very different in character, containing for the most part public servants peacefully exercising their right to strike, and not blocking access to anyone until the MPPs arrived in the Metro vans. There is no evidence that the crowd even knew that they were blocking MPPs.

89. The CMU commander, Sergeant McElary-Downer, does not appear to have been involved in decision making at the scene of this action. She followed the Inspector's orders at the North Whitney incident, but does not appear to have spoken directly with Inspector Hope, to advise him of the situation, or of her efforts to communicate with a member of the crowd. The end result was that an attempt to resolve the situation without resort to violence was prematurely ended.

90. During both the North Whitney and North Frost deployments, it is clear that from the beginning, things were not going entirely according to plan. However, given the emphasis which had been placed on MPP access, the OPP went ahead with the plans, with results predictable from quickly formed plans which go off kilter. There should have been more flexibility either in the mission for the day, or the specifics of the plans, to allow for cancellation or modification of the plans where it appeared that violence would be the end result.

APPENDIX D(3)

THE METROPOLITAN TORONTO POLICE FORCE

Structure of the Metropolitan Toronto Police Force

1. The Metropolitan Toronto Police Force is the province's largest. It has policing responsibilities across the Metropolitan area, generally to the exclusion of the provincial and national forces. The Queen's Park area is located within Metro's 52 Division, and that division therefore has general policing responsibilities at Queen's Park, as it does for other buildings within the division. 52 Division is commanded by Superintendent James Parkin, who reports upward to Deputy Chief Robert Molyneaux at Metro Central Field Command.
2. Among the Metro units within 52 Division is the Community Response Unit, which was formerly known as the Area Foot Patrol, and still familiarly carries the moniker "Area Foot". In command of Area Foot in 52 Division is Staff Inspector Marlene Watson. 52 Division Area Foot is deployed in platoons, one of which was commanded by Sergeant Danny Pearson, who was active during the day in communicating with the OPP and assisting the entrance of MPPs.
3. A number of units are available to be deployed when requested by senior Metro officers. These include the Public Order Unit, the crowd control unit which is roughly equivalent to the OPP's CMU. The POU is made up of any number of Police Service Units, each containing 16 officers. Staff Inspector Ron Taverner is the Unit Commander of the POU, and acted as POU field commander on 18 March. Staff Sergeant Wesley Ryan, an officer involved in the development and implementation of the training program of the POU, was Staff Inspector Taverner's Second-in-Command on 18 March.
4. Staff Inspector Taverner is also the Unit Commander for Community Services, an umbrella unit which among other areas encompasses Metro's Industrial Liaison Section. Industrial Liaison is normally a small, two-member, specialized unit headed by Sergeant Jim Muscat that becomes involved in labour disputes, and acts as a liaison between union and management in trying to deal with potential problems. In preparation for the OPSEU strike, however, additional Metro officers from other divisions, including one Constable Lazzotte, received Industrial Liaison training under Taverner. These units are unrelated to 52 Division, but may be deployed to work in conjunction with 52 Division officers when necessary.
5. In addition to the above mentioned units, officers from other Divisions, the Mounted Unit, Traffic Support Services, Video Production, Intelligence, and Court

Services were present on March 18th, 1996, bringing the total number of Metro officers called out or available for call-out for the Queen's Park demonstration to over 300.

6. Superintendent Parkin, Staff Inspector Taverner, Staff Inspector Watson, Staff Sergeant Ryan and Sergeant Pearson all gave evidence before the Commission.

Preparation by Metro for 18 March

7. Over 300 demonstrations take place in the area which is 52 Division each year, as the division encompasses both Queen's Park and University Avenue, home to consulates and court houses. In addition, they deal with numerous crowd situations, including Skydome sporting events, and weekend nights in the downtown bar district. Planning for these demonstrations, both at Queen's Park and elsewhere, is usually based on expected numbers, and intelligence as to the nature and intent of the demonstrators.

8. Due to the existence of an OPP detachment at Queen's Park, Metro's role in the area was somewhat unusual. However, through tradition and agreement, the practice developed that for demonstrations at Queen's Park, particularly those expected to be large, liaison would take place between Staff Sergeant Hough at the LSS and a Metro Staff Sergeant at 52 Division. Intelligence as to crowd expectation would be shared, and Metro would attend to police the event.

9. Metro and the OPP's policing of an event at Queen's Park, by arrangement, was such that the OPP would look after the inside of the buildings, and Metro would take care of the outside. Metro officers would assist inside where necessary and invited, and the OPP would assist outside under the same circumstances.

10. It is in the context of this arrangement that Metro was involved in policing the demonstration which took place on 27 September, 1995, on the date of the Throne Speech. There, Metro officers who were policing the crowd outside ended up pushed back by the crowd using the temporary barricades which had been installed, and forced up against the locked doors to the Legislative Building. There, a battle of sorts took place over the barricade, with Metro officers having to use batons to quell crowd members threatening to storm the Legislature. A number of Metro officers and protestors were injured in the event.

11. As a result of this unfortunate incident, Regional Commander Currie of the OPP sent a draft informal agreement to Deputy Chief Molyneaux of Metro concerning security at the legislative grounds. The letter provided that the OPP would create an Entry Control Unit of 10 OGPS officers to patrol the area just outside the Legislative Building. It was hoped that this unit would help provide a consistent response to most smaller demonstrations, and aid in preventing the recurrence of the situation experienced on 27 September, wherein Metro officers patrolling this area were stuck against the locked door

of the Legislature. The letter continued that the OPP would deploy an ERT to support this Entry Control Unit for mid-sized demonstrations where sufficient notice made this possible, and would assist Metro in providing for a combined effort for major demonstrations.

12. In return, under the terms of the draft agreement, Metro would respond in emergency situations to support the LSS, provide assistance with special expertise and intelligence, and take the lead role in major demonstrations through the deployment of the POU and other resources as required. While no response was received to this letter, it appears that it reflects the working relationship between Metro and the OPP at Queen's Park.

13. In an effort to formalize Metro's role at Queen's Park, the Speaker sent a draft Memorandum of Understanding to Metro in December of 1995, and invited their comments. While this was considered by Metro, it was not until 21 February, 1996 that Metro returned a draft Memorandum of Understanding to the Speaker, which outlined how they viewed the best definition of responsibilities.

14. In the meanwhile, on 7 February, 1996, the student demonstration had also turned into a violent event. This time, however, when barricades were pushed forward and overturned, LSS and Metro officers withdrew from the onrushing crowd to prevent a repeat of the Throne Speech incident. They then entered the building from another access point, and provided backup to the OGPS in forming a barrier inside the building to prevent the students, who had successfully smashed their way into the Legislature, from proceeding any further.

15. The following week, Metro met with the OPP on 13 February, 1996, a meeting during which the plan for the strike was reviewed. On the same day, Metro Industrial Liaison and other officers met with Dave Moores of the OPP and ORC representatives met for a meeting to discuss policing needs at Ontario government buildings during a potential strike. At this meeting, Metro struck a Strike Task Force consisting of members of a variety of Metro units and divisions for the purpose of preparing for and coping with policing needs during the strike. This Task Force met on the following day, and frequently thereafter, arranging operational and organizational details, and considering policing approaches and policy for the conduct of the strike.

16. Metro met with the OPP again a week later, on 20 February, 1996 at Metro Headquarters to discuss issues surrounding the strike, which was now set to proceed.

17. On 21 February, 1996, Metro met with provincial representatives of OPSEU to discuss concerns regarding the upcoming strike. At this meeting, a system of communication was established between picket captains and Industrial Liaison officers for resolution of any problems on the picket line.

18. Metro's experience during most of the strike was generally a "positive" one if it can be said that anything this unpleasant can be positive. Their Industrial Liaison section was called upon to settle picket line disputes and to assist in the negotiation of protocols, but for the most part, there was little picket line violence, and problems were dealt with reasonably effectively. Metro's Industrial Liaison Unit maintained a healthy ongoing working relationship with OPSEU representatives.

19. Despite this relationship, however, it appears that Metro received little, if any, useful information about the mass picket and demonstration which was being scheduled for 18 March. In particular, Metro was unaware of even the schedule for the day, including the fact that the demonstration was scheduled to end at about 2:00 p.m.

20. Metro was aware that there were going to be large crowds on 18 March, and also had the events of 27 September and 7 February in their minds. Given the recent history of volatility in Queen's Park demonstrations, and the potential presence of disruptive groups piggy-backing on the OPSEU demonstration, Metro determined that the POU should be called out for 18 March, and beginning on 14 March went through the process of causing that to happen.

21. On 15 March, in one of the most unfortunate missed connections of the whole event planning stage, Gary Adams of OPSEU, one of the event organizers, contacted Metro 52 Division to discuss the plans for the day. Despite the lack of intelligence that Metro had concerning the event, Metro did not speak with Mr. Adams on that day, advising him instead to call Sergeant Pearson again early on the morning of the 18th.

22. Later on 15 March, Metro officers met with OPP officers to discuss the plan for 18 March. The facts with respect to this meeting have already been set out in great detail in Appendix D(2).

23. Metro and the OPP left the 15 March meeting with the understanding that if any further arrangements or organization were necessary for the 18th, that it would and could be dealt with on the Monday.

24. Metro spent the weekend organizing and calling out personnel for the demonstration on 18 March. It was not in contact with the OPP or with OPSEU during the course of the weekend.

25. It is clear from all of the evidence that Metro approached 18 March as yet another demonstration in a Division which is filled with demonstrations. They were very conscious of the labour relations aspect of this particular demonstration, however, and it appears to have created part of the Metro approach on the day. The focus for Metro was clearly on crowd control and ensuring peace on the picket lines. The access of MPPs to the Legislature, while certainly important, was not the first thing on their minds.

Activities of Metro on 18 March

26. Superintendent Parkin briefed 52 Division officers at about 6:00 a.m. on 18 March. This briefing included some of the information from the 15 March meeting, in that the OPP had plans to get MPPs into the buildings at 11:00 a.m. and 12:00 noon. The overall tenor for the day for Metro was that it was to be a "go slow" day, with the Area Foot Patrol doing most of the policing, and the POU on standby. If violence erupted, Area Foot were to withdraw, and the POU would be deployed, and Area Foot officers, having donned protective gear, would then provide back-up for the POU.

27. Staff Inspector Taverner held a similar parade of the POU a little later in the morning, giving his officers general instructions and information as to the event, and reminding them to act professionally, and ensure that they had all of their equipment. He also passed on that there was no indication that violence was expected.

28. As advised on 15 March, Mr. Adams called 52 Division again early in the morning on 18 March. He was advised at that point that he should speak to Staff Inspector Watson, who would be at Queen's Park as the site commander of 52 Division. This led to a meeting between Mr. Adams of OPSEU, Bill Howes of the OFL, Staff Inspector Watson of 52 Division, Sergeant Muscat of Industrial Liaison, and other Metro officers. During this conversation, Mr. Adams told Metro of the security marshalling teams which would be under the supervision of himself and Mr. Howes. He advised Metro that OPSEU was expecting a peaceful rally, and that it would be establishing a 15 minute "protocol" at the east door to the Legislature, but would be "asserting itself" to a greater degree at the MacDonald complex.

29. It appears that Metro did not realize that OPSEU's intention to "assert itself" to a greater degree essentially meant that there was a plan afoot to effect total blockage at the doors to the MacDonald complex. Staff Inspector Watson in return relayed a warning about the potential presence of disruptive groups, and advised Mr. Adams that it was up to OPSEU to watch for them and be prepared for their presence.

30. Notable omissions from the mutual transfer of communication were the planned schedule for the day, including the intention to end the day at roughly 2:00 p.m., which was not offered by Mr. Adams; and the presence and potential for deployment of crowd control units, which was not passed on to Mr. Adams by Staff Inspector Watson, despite the effect that this information might have on OPSEU's conduct on the day, and the fact that Mr. Adams was clearly involved in security for the day and hence would have an interest in the potential consequences of OPSEU activity, so that it could be properly and appropriately controlled.

31. Staff Inspector Watson conveyed the information given to her by Mr. Adams to Superintendent Parkin a few hours later, at about 8:30 a.m. Perhaps due to Staff Inspector

Watson's failure to appreciate the meaning of Mr. Adams assertion concerning the MacDonald complex, the differing approaches to the two areas was not passed along to the Superintendent.

32. Another OPSEU/Metro conversation took place between Gavin Leeb, one of the other event organizers, and Constable Lazzotte of Metro's Industrial Liaison. Mr. Leeb testified that he was even more explicit in his advice that this was a special day, and that OPSEU intended to exert a 15 minute delay at the east door to the Legislature, while shutting down the rest of the complex for the day. This advice, again, did not appear to leave a significant impression on the Metro officer, and apparently did not change Metro's approach to policing the event.

33. Metro and the OPP began to interact in a significant way at approximately 8:45 a.m. At that time, the OPP deployed its CMU at the rear entrance to the South Frost building for the second time. Sergeant Pearson of Metro witnessed the deployment, and was concerned about what he saw. He called for a senior officer to attend, and ultimately he, Staff Inspector Watson and another officer sought audience with Inspector Hope.

34. The Metro officers spoke with Inspector Hope with an eye to expressing their concerns regarding the deployment of the CMU and the conduct of another OPP officer during the recent access of MPPs to the South Frost building. In the middle of this conversation, word came in that a large group of MPPs was headed toward the entrance. As Inspector Hope prepared to send the CMU out for a third time, Sergeant Pearson asked that he and Staff Inspector Watson be permitted to address the crowd in an effort to bring the MPPs in, rather than have the CMU deployed again. Upon Inspector Hope's acquiescence, the Metro officers opened the doors, informed the crowd of the arrival of the MPPs, and were able to convince the protestors to step aside to permit the entry of the MPPs. Although the MPPs were verbally harangued, there was no evidence of physical assault on them at this time.

35. The Metro officers returned inside after this entrance, and spoke again with Inspector Hope. Sergeant Pearson requested that this approach be adopted, rather than the use of the CMU, and Inspector Hope replied that Sergeant Pearson's point was taken.

36. At approximately 10:15 a.m., Deputy Chief Molyneaux, Superintendent Parkin and Staff Inspector Taverner surveyed the scene at Queen's Park. The officers spoke about crowd build-up, the crowds at the North Whitney door and the potential deployment of the POU. As a result of this conversation, Superintendent Parkin decided that it was unwise to remain in a mobile command post, and determined to establish a stationary command post at Metro Headquarters. This command post was established by 10:30.

37. Also at about this time, a conversation took place between Superintendent Parkin and Inspector Hope, in which the latter confirmed that the 11:00 a.m. and 12:00 noon plans were scheduled to go ahead as planned. Despite the event at the South Frost

building in which Sergeant Pearson had requested that the Metro strategy be adopted, Superintendent Parkin was unaware of any change in role of Metro with respect to bringing MPPs into the building.

38. Throughout the morning, a number of other attempts had been made by Superintendent Parkin and Staff Inspector Taverner to contact Inspector Hope. Unfortunately, owing to both technical communications difficulties (see Appendix C) and the fact that Inspector Hope was on the move during the course of the day, many of these attempts were unsuccessful.

39. At about 10:50 a.m. Sergeant Pearson received a call to assist an officer at the east Legislative lawn. On arrival, he discovered a number of Metro uniform and OPP plainclothes officers with a group of MPPs, who had drawn a bit of a crowd on the east lawn. The 11:00 plan was evidently being put into effect. The MPPs were escorted by the officers of both forces from the east lawn, across Queen's Park Circle, to the south door of the Whitney building.

40. A phalanx of uniformed and plainclothes officers, surrounding several Members of Provincial Parliament, was a sight which drew interested picketers and protestors from the area. These demonstrators rapidly determined where the group was heading, and were quickly able to overtake the pace of the MPPs, cutting them off by crowding the stairs leading to the doors of the South Whitney.

41. The result of the ensuing attempt to access the south Whitney door was is a stalemate, wherein Metro officers were unable to advance toward the door, owing to the mass of bodies, and the protestors were unwilling to step aside to provide access. The result was a five or ten minute press of bodies, with neither side advancing. At the end of this time, one of the Metro officers on the stairs received a telephone call from Gavin Leeb of OPSEU, who was part of the crowd refusing access to the MPPs. Mr. Leeb indicated that this was not going to work, that the members were not going to get access, and requested that Metro and the MPPs withdraw. After discussions between the officers, this was the course of action decided upon. The MPPs were taken back to Queen's Park Circle, the POU van was unloaded of its officers to make room, and the MPPs were whisked away in that van.

42. During this time, the OPP had offered their assistance through the use of the CMU, which was waiting on the other side of the south Whitney Block doors. Metro had its POU in the area, ready for deployment, and refused the offer. Ultimately, the POU did nothing more than scout the scene during this stalemate, and did not come in contact with the crowd.

43. As a result of the stalemate at south Whitney, Hope came out of the Whitney building at about 11:15 am, and met with a number of Metro officers, including Sergeant

Pearson and Sergeant Muscat. Staff Inspector Watson came in part way through the conversation, and Staff Inspector Taverner and Staff Sergeant Ryan arrived on the scene toward the tail end.

44. During the conversation, Sergeant Pearson told Inspector Hope that the MPPs had been taken to safety. Sergeant Pearson suggested a plan to effect entry for the MPPs which included a diversion plan. Having asked what the easiest door to access was, Sergeant Pearson was told that the north Whitney doors were deserted. A plan was therefore devised to deploy Sergeant Pearson and other Metro officers at the south Whitney door in a form of cordon to attract protestors to that location. Meanwhile, the OPP would bring the MPP's in through the north end of the Whitney Building. Sergeant Muscat was to follow Inspector Hope and act as a liaison. There was no common understanding as to how MPPs were to be brought in.

45. Ten or fifteen minutes later, at about 11:30 a.m., Metro officers carried out the diversionary aspect of the plan with what appeared to be a certain amount of success. In conjunction with officers from other divisions, a corridor was created at the south Whitney door, drawing four to six hundred protestors to the location. However, after five or ten minutes, Sergeant Pearson started losing his crowd toward the north end of the building.

46. At the same time, Staff Inspector Watson had been approached by an OPSEU marshal who indicated that there were two people in the crowd at the east side of the Legislative Building who wanted to see a police officer. She attended, and ultimately escorted two further MPPs out of the crowd and into another waiting van.

47. During this time, the events which have been described at the north Whitney loading ramp were taking place, almost unbeknownst to Metro officers, save those driving the vans, and Sergeant Muscat, who was acting as liaison. Staff Inspector Taverner and Staff Sergeant Ryan stumbled upon the scene almost by accident, seeing the altercation between picketers and police already in progress, from the corner of Wellesley and Queen's Park Circle. By the time they arrived at the top of the loading ramp, the CMU had withdrawn, and they occupied themselves looking after the fallen picketer.

48. Shortly after the events at the North Whitney loading ramp, Superintendent Parkin recalls speaking briefly with Inspector Hope, expressing his surprise that the CMU had come out, and stating that Metro would not be escorting any more MPPs to the doors until they had stopped and reassessed the situation. Hope responded that there were time constraints, and that it was essential that the MPPs be brought into the Legislature.

49. During this time, MPPs were directed to Metro Headquarters, and were subsequently sent to the rear of Maple Leaf Gardens, as Superintendent Parkin did not think it wise to have them at 40 College St., where problems might arise.

50. Shortly after 12:30, Gary Adams of OPSEU spoke with a number of Metro officers, volunteering the use of his security team marshals to assist in getting in. Superintendent Parkin recalled his senior officers to 40 College St. for the purpose of discussing any plan for getting members in. During this meeting, at which Staff Inspectors Taverner and Watson were present, use of the marshals was discussed, and Superintendent Parkin gave his approval to the use of the marshals in an attempt to get the MPPs into the Legislature. At least one of the marshals was a member of the OGPS, and hence had a thorough knowledge of the complex. She stated that there was a better option available by using an underground parking garage, but this plan was ultimately rejected by the OPP as mechanically unfeasible.

51. A number of conversations ensued between Staff Inspector Taverner and Inspector Hope as to the plans for 95 Grosvenor. Staff Inspector Taverner put forward the OPSEU marshal's offer to assist in escorting the MPPs into the building, an offer which was initially resisted by Inspector Hope, but to which he ultimately agreed. Staff Inspector Taverner left these calls with the impression that the plan was to have the OPSEU marshals address the crowd. If this was insufficient to ensure access of the Members, Metro officers would assist the marshals, using first Area Foot, followed by the POU and mounted units if necessary. As referred to in Appendix D(2), Inspector Hope left the phone conversations with a distinctly different impression of the plan.

52. At around 1:00 pm, the Metro POU and mounted units were on standby near the North Frost Building, and the MPPs who had collected behind Maple Leaf Gardens were assembled in vans, ready to drive to the North Frost Building. Members of Area Foot were on the steps to the North Frost Building, and ultimately assisted in removing several barriers which had blocked the doors to the building. Sergeant Pearson during this time addressed the crowd, advising them that members of the OPSEU security marshalling team would shortly be arriving to speak to them. He did not tell the crowd of the impending arrival of the MPPs.

53. At approximately 1:20 pm, the OPSEU marshals left Metro Headquarters for the North Frost Building. Minutes later, the Metro convoy, carrying its elected cargo, followed. Not having given enough time for the marshals to get to North Frost by foot, the vans passed the marshals *en route* to the access point.

54. When the Metro vans arrived at the North Frost Building, at approximately 1:30 p.m., a large crowd had gathered. Almost immediately, the CMU was deployed to create a cordon, and the Area Foot officers who had been on the stairs were stunted off to the side. The marshals arrived shortly thereafter, and attempted to assist on the east side of the cordon. The MPPs left the vans and proceeded through the cordon into the North Frost Building.

55. As the second van was being prepared to be unloaded, Staff Inspector Taverner determined that he should deploy one PSU of his POU to assist the CMU in their task of maintaining a cordon. The POU joined the cordon at the end of the west side, and kept protestors back. In doing so, some used their shields to push the protestors, but their batons were not drawn.

56. When all of the MPPs had entered the building, the CMU withdrew into the building. The Metro POU withdrew to the east in a unit, and were not subjected to abuse or attacks by the crowd. The members of Area Foot also left the scene to the east.

57. After the North Frost event was over, back at Metro Headquarters, senior Metro officers met to discuss what had transpired. The officers expressed surprise at the presence of the CMU, and concern that the vans had arrived too early to allow the OPSEU marshals to address the crowd.

58. Meanwhile, back at Queen's Park, at approximately 1:45 p.m., Metro officers attempted to assist Municipal Affairs Minister Al Leach in gaining access to the Queen's Park Complex via the North Frost Building. The end result was reminiscent of the scene at the South Whitney, in that a stand-off resulted between Metro officers, the Minister, and the members of the crowd. After it became apparent that access would not be gained at this location, the Minister was escorted away from the building and obtained access elsewhere.

59. By 2:05 p.m., the scheduled protest activities for the day had wound down, and Metro area foot officers had begun to stand down.

60. As the result of communication between the OPP and Metro, a joint debriefing was scheduled for 2:30 p.m. at Metro Headquarters. Shortly before the debriefing, a private meeting was held between Deputy Chief Molyneaux, Deputy Chief Kerr, also of Metro, Superintendent Parkin and Inspector Hope. The tenor of the conversation was that a lot of things had gone wrong during the course of the day, and that tempers might flare, which would not be constructive for the debriefing.

61. The joint debriefing was then held, attended by most of the major players from the two police forces during the day, specifically Deputy Chief Molyneaux, Superintendent Parkin, Staff Inspectors Taverner and Watson, Inspector Hope, Staff Sergeants Hough, Ryan, and McElary-Downer and Sergeant Pearson. As referred to in the description of the day's events found in Appendix D(2), various attendees expressed their concerns as to what had occurred during the day, agreeing that the downfall was the interplay between command and communication.

62. By 4:30 pm, members of the POU were standing down and reporting off duty.

Critique of Metro's Activities on 18 March

63. Metro saw its duty as primarily crowd control and that which arises as a police officer's duty during a strike within his or her jurisdiction. Thus, Metro saw its function as being discharged through many activities, including liaison with both employer and employee. Metro was, in its view, first and foremost engaged in the maintaining peace and order at Queen's Park and ensuring the safety and security of all persons and property in the area.

64. Because of this philosophy or approach, it is clear that Metro did not put the same accent on ensuring that MPPs were able to get into the building in time for the opening of the House. While they were certainly involved in access plans once the day began, they clearly had not put their minds to the issue before 18 March. Much of this lack of planning can be attributed to the bifurcated nature of policing at Queen's Park. However, had Metro turned its mind to this aspect of the picket line at Queen's Park with a greater degree of seriousness, some inter-force solution might have resulted which would have obviated the necessity of violence, and certainly would have removed some of the confusion between the forces.

APPENDIX D(4)

THE ONTARIO PUBLIC SERVICE EMPLOYEES UNION AND THE ONTARIO FEDERATION OF LABOUR

Structure of OPSEU

1. At the start of the strike, the Ontario Public Service Employees Union represents approximately 100,000 employees in both the private and public sector, including about 65,000 employees in the public sector. OPSEU divides the province into seven geographically defined regions, including the Greater Toronto Region, referred to as Region 5. Each of the seven regions sends four representatives to the OPSEU Board, which is, in conjunction with the President, currently Leah Casselman, responsible for the overall governance of OPSEU.
2. Within Region 5 there are approximately 18,000 public sector OPSEU workers, approximately 2,500 of which work in the Queen's Park Complex.
3. The membership of OPSEU is divided into locals, which are headed by Local Presidents, elected by the members of the local. The Local President for Local 522, the local at the Legislative Precinct, Don Sheppard, gave evidence before the Commission.
4. For the purposes of strike planning, a central strike committee was formed, consisting of the President, First Vice President and bargaining teams. On the local level, each local would elect a local strike committee and a local executive committee. A local bargaining council would also be in place, to liaise between a bargaining team and the local to relay information.
5. As a distinct entity, a Mobilization Task Force was set up in Region 5 to assist the regional service area co-ordinating group. It was established in this region alone for a number of reasons. Primarily, because Region 5 is the largest region within OPSEU, and there was a belief that Region 5 was in need of specific assistance, as the OPSEU members in that region were not necessarily strong on the union.
6. The Mobilization Task Force, prior to the strike, was involved in informing members about bargaining issues, government offers, and the potential for strike action. As the strike vote loomed, the Task Force disseminated information concerning the issues involved, and encouraged people to take part in the strike vote. Once the strike had commenced, the Task Force took on a problem solving role, which included solving difficulties with respect to everything from strike pay, to picket signs, fire barrels, and wood.

7. The Mobilization Task Force consisted of four members from Region 5, two of whom testified at this inquiry: Gavin Leeb and Gary Adams, both grievance officers with OPSEU.

8. Other labour groups showed support for OPSEU during the course of the strike and in preparation and planning for the events of March 18, 1996, and for this reason are worth referring to at this time. In particular, the Ontario Federation of Labour ("OFL") is an umbrella organization for labour groups across the province. The Metro Labour Council ("MLC"), and Canadian Labour Congress ("CLC"), are similar organizations related to those jurisdictions.

9. A number of other unions showed support for OPSEU during the course of the strike and through their presence on March 18, including the Canadian Union of Public Employees ("CUPE"), the Canadian Auto Workers ("CAW"), the Ontario Secondary School Teachers Federation ("OSSTF"), the Canadian Union of Postal Workers ("CUPW"), and the United Steel Workers of America ("Steel Workers").

Preparation of OPSEU for 18 March

10. Most of OPSEU's planning for the strike, and for 18 March in particular, took place internally. Prior to the strike, OPSEU was involved in disseminating information to its membership, and preparing for the strike vote. Educational seminars were held for members of union locals, including an educational weekend which took place the weekend of 20 January, 1996, for members of Region 5, during which such issues as labour law, strike committees and picketing organization were discussed. On 2 February, 1996, OPSEU distributed revised Picket Strategy Guidelines to its members as an instructive aid in dealing with the ever increasingly possible strike. That document specifically stated that OPSEU had the right to picket entrances to the Legislative Building.

11. On 18 February, OPSEU voted to reject the Government's bargaining proposal, and hence to go on strike. The remainder of that week was taken up in preparations for the strike, particularly on a logistical level. Such aspects of a strike as picket signs, fire barrels, strike schedules and strike pay had to be dealt with, as OPSEU prepared for one of the biggest strikes in the history of the province, with picket lines at up to 10,000 locations across Ontario.

12. On February 21, 1996, provincial representatives of OPSEU, including Mr. Leeb, met with members of the Metro Police Strike Planning Committee to discuss various aspects of the upcoming strike, share information, and familiarize each party with the people, policies and procedures of the other.

13. In response to inquiries from the Liberal and NDP Caucuses, Heather Gavin, Executive Assistant to President Leah Casselman, wrote letters dated 22 February, 1996,

to the Liberal Caucus Labour Critic, and Bud Wildman, the NDP Interim Leader, indicating that OPSEU had no intention of restricting access to the House of members of parties with interests aligned to OPSEU. Perhaps not surprisingly, no similar letter was written to a representative of the PC Caucus. Indeed, throughout the period prior to and during the strike, any interaction between OPSEU and the PC Caucus was related to collective bargaining, and not, on the evidence, to the operational side of any strike or protest action.

14. At the beginning of the strike, OPSEU picket lines for the most part were not militant, and had a more celebratory attitude. These picket lines were staffed by OPSEU members. The number of employees walking on the picket line gradually built up as the strike continued. The object of the picket lines was to announce the strike to the public of Ontario, to pressure the government into a collective agreement beneficial to the strikers, and to persuade non-union employees, members of the labour movement, Members of the Legislature, the press, and members of the public to support the OPSEU position. The main object of the union was to build up pressure as quickly as possible to obtain a collective agreement with minimum delay because of the loss of wages and the expense of continuing the strike.

15. As the strike progressed, tensions mounted as the financial pressures of the strike began to affect strikers. OPSEU realized both that tougher lines would be needed to effectively convey its message, and that morale was waning. With this in mind, a rally was planned for 900 Bay Street, in the McDonald complex for 8 March, 1996, which was well attended, and had a positive effect on the strikers' morale.

16. OPSEU maintained a picket line at the east door of the Legislative Building from very early on in the strike. At the beginning of the strike, this line was not particularly strident. As the strike progressed, however, the line toughened on occasion, in part due to instructions from OPSEU strike organizers for other OPSEU members, not part of the Legislative Building local, to attend and assist at the east door. Waiting periods were then requested or imposed, and there were a number of physical incidents when the request was not acceded to.

17. During this time, OPSEU and the Government of Ontario had implemented a system whereby injunction disputes proceeded expeditiously. OPSEU knew the police labour dispute policy and knew that the Government of Ontario did not ask the police to open a picket line pending obtaining an injunction.

18. OPSEU planning for the rally on 18 March did not begin until 11 March. At this stage, the plan was in a very formative stage, a reaction to the well received rally which took place on 8 March. 18 March offered OPSEU its first opportunity to communicate effectively, face to face, with the Members of the House who had voted on issues directly relating to the status of the unions and the right of government employees to strike. It is

not unexpected that a bargaining agent for government employees would, in these circumstances not overlook the possibility of putting pressure on the government in settlement negotiations, and at the same time, advance their bargaining and political claims by attempting to address Members of the Legislature returning to the House. In short, the union had discovered twin platforms through which they might advance their causes and demands, with press and television coverage of the scene, by staging a demonstration and manning aggressive picket lines around the Legislative Assembly building.

19. This twin opportunity thus presented itself to the union members. On the same day, in the same place, and by the same demonstration, the trade union had the opportunity to advocate its views on the issues raised by the strike directly to the lawmakers (the legislators) and the opposing negotiators (the Cabinet, being the Executive Branch of the government) and to the general public. This was the golden opportunity offered by the opening of the House and the continuing strike with the concomitant right to picket.

20. Concrete planning for the 18th did not take shape until a meeting on 13 March, 1996, between OPSEU and representatives of the OFL, MLC, and CLC. At this meeting, Mr. Leeb laid out the possibility of conducting a massive rally, picket and protest at Queen's Park on the 18 March, to coincide with the opening of the Legislature. At this meeting, the plans for the day were discussed in a general way, including an intention to block access to the MacDonald Complex, but the plan for Legislative Building itself was not finalized. The other labour groups were asked to distribute information about the protest, asking their members for their support by showing up at Queen's Park on 18 March. Also at this meeting, OPSEU discussed putting two security marshalling teams together for the day. The first, to look after security at the Legislative Building and grounds, would be under the direction of Bill Howes of the OFL. The second, to look after the other government buildings, would be under the direction of Gary Adams of OPSEU.

21. As a result of this meeting, the various labour organizations distributed flyers to their membership, announcing the event and requesting support. Adams and Howes recruited members who were seen as having particular leadership skills, to act as security marshals for 18 March.

22. In the following days, further details of the day crystallized, and logistical questions such as Mr. Howes and Mr. Adams security teams, picket signs, radios and portable toilets were addressed. OPSEU put together a timetable for the 18th, which included beginning the day's events at 7:00 a.m., and finishing at 2:00 p.m. At 12:00 noon, the plan called for speakers, including Ms. Casselman, to address the crowd on the south Legislature lawn. On either side of this event, a "mass picket of the legislature" was called for. The concept for the "mass picket" was to create a large picket line, completely encircling the Legislature, which would provide good visual effect, and send a strong

message to the government. This timetable was distributed to a variety of members of OPSEU, and strike captains, starting on the Thursday and Friday before Monday, 18 March.

23. The plan for the day from OPSEU's point of view was reasonably simple. A non-violent picket and protest was wanted, in which to make a point to the government and show the support that OPSEU had in their strike activity. As part of this picket, it was intended that the buildings in the Queen's Park Complex, save for the Legislative Building, would be shut down completely by blocking access to the doors. At the Legislative Building, a fifteen minute delay would be imposed. It was clear to the Commission from the evidence that OPSEU, while not aware of the niceties of parliamentary privilege, was aware that blockage of the Legislature was not appropriate, as it would amount to anarchy.

24. On 14 March, Mr. Sheppard received a letter from the Clerk of the House, copied to Ms. Casselman and the House Leaders, indicating his displeasure with the imposition of delays at the east door, referring to the rights of MPPs to access, and demanding the cessation of any impedance of Member access. Mr. Sheppard received this communiqué on the evening of 14 March. As he was not due in to the picket line on 15 March, it was not until 18 March that he provided photocopies of the document to those members of his local which he ran into at Queen's Park. There was no evidence before the Commission of what, if any, reaction there was to the copy of the letter sent to Ms. Casselman. Beyond this, OPSEU had no communication with the Speaker's Office, despite the fact that Mr. Sheppard was well aware of the structure of the Legislative Assembly, and the role of the Speaker and the Sergeant-at-Arms.

25. There was clearly some lack of communication within the internal OPSEU structure. Those who were planning for the 18 March demonstration, the Mobilization Task Force, were not in ongoing communication with the upper echelons of OPSEU management, including the President's Office. The end result of this was that information which was passed to and from the office of the President, such as OPSEU's communications with the Caucuses on 22 February, and the Clerk's letter of 14 March, 1996, did not filter down to the level of those doing the front line planning for 18 March.

26. On 15 March, 1996, Gary Adams of OPSEU contacted Metro Police, and was eventually referred to 52 Division. He spoke with a Sergeant, and was advised to call Metro again on the Monday morning and speak to Sergeant Pearson. OPSEU had no further contact with Metro police until the morning of 18 March.

27. On the afternoon of 15 March, OPSEU held an under-attended staff meeting, at which the plan for the day, and picket captain assignments were discussed. Two picket captains were assigned to the east door of the Legislative Building.

28. No meetings or training sessions for the security marshals took place until a briefing on the morning of 18 March. A memo from Pam Doig of the Task Force, dated 16 March, was sent to Ms. Casselman and others regarding what was planned for the day.

29. OPSEU held two meetings on Sunday, 17 March, 1996 in preparation for the demonstration and picket. The first took place in the morning, and was attended by over 100 local presidents and interested members of OPSEU. The meeting discussed a variety of things to do with the strike, including a half-hour discussion by Mr. Leeb on the plan for 18 March.

30. A second meeting was held on Sunday afternoon, attended by virtually all of the picket captains for Monday. Again, Mr. Leeb addressed the meeting on the subject of plans for the 18th. He started off the meeting by reiterating the importance of a non-violent event. The plans for the day were discussed, as were various logistical questions including who could be contacted in case of concerns, how to react to police intervention, and the general plan and timing for the day.

31. At no time prior to or during the strike did OPSEU have any communication whatsoever with the OPP, of whose presence in the Queen's Park Complex the planners were apparently completely unaware, despite the fact that the OGPS were also members of OPSEU, many of whom were on strike.

Actions of OPSEU on 18 March

32. OPSEU's day on March 18th began, as for others, in the early morning. At 5:30, Mr. Adams briefed his security marshals on the plans for the day, and their role, and Mr. Leeb arrived at Queen's Park, to survey the situation.

33. At approximately 6:00 a.m., Mr. Adams called Sergeant Pearson, as had been arranged on the Friday, and was advised to find and speak to Staff Inspector Watson of 52 Division. This conversation took place at approximately 6:30 a.m. in the form of a meeting between Gary Adams from OPSEU, Bill Howes from the OFL, and Staff Inspector Watson, Sergeant Trimble, Sergeant Muscat and Constable Lazzotte, from Metro. After discussions concerning a flatbed truck which would be used as a speaking platform, Mr. Adams advised Metro of the presence of the security marshall teams, and the parties exchanged cell phone numbers. Mr. Adams also advised Metro that a 15 minute delay would be implemented at the east door to the Legislature, and that OPSEU would be "asserting itself" to a greater degree in other areas of the McDonald Block. The Metro officers pointed out to Adams their concerns about other non-union groups who might be interested in provoking the crowd or causing disturbances.

34. An even franker discussion took place at approximately 7:00 a.m., after Mr. Leeb returned to Queen's Park after a trip to the OPSEU office, and saw Constable Lazzotte

sitting in his cruiser with his partner. Mr. Leeb spoke to the officer, and told him that OPSEU would be attempting to close off buildings in the McDonald complex until 2:00 p.m.

35. At neither of the two OPSEU/Metro meetings did OPSEU representatives see fit to pass on to Metro a copy of their printed timetable for the day. Neither did Metro react to the advice of OPSEU that blockage and delay was going to take place. Such a simple exchange of information as this might well have increased Metro's knowledge of OPSEU's plans to the point where MPP access plans could be structured around it.

36. At around this time reports were coming in that various entrances to the Queen's Park Complex were being blocked, and would be blocked for the remainder of the day, or until 2:00 p.m. It appeared that the non-legislature side of the OPSEU plan was coming together. A large number of members of OPSEU were brought into Toronto by the busload from around the province and a number of members of the other trade unions in Ontario arrived to support and show the solidarity of the labour movement behind OPSEU in this strike.

37. There were incidents early in the day when the picket line was thin at the east door that persons barged through the line. A report came in at 7:30 a.m. that people were being let in the east door after a fifteen minute protocol. However, half an hour later, it appears that picketers were not allowing access at all to the east door. By 8:00 it was reported to Leeb that the first door in the MacDonald Block was shut and the MacDonald Block logs record that the picketers were taking the position that the building was shut until 2 p.m.

38. During the course of the day, Liberal and NDP MPPs walked the picket line at the east door with OPSEU. At approximately 8:15, Al Palladini, Minister of Transportation, arrived at the east door. After leaving his car, and walking towards the east door, he was approached by a number of demonstrators, with the end result that he did not get in the east door, but rather turned and walked back to his car. Once back in his car, a team of security marshals assisted the car in getting clear of the east driveway. The crowd is heard in videotapes to be chanting on occasion "Nobody in, Nobody out".

39. At approximately 8:25 and 9:00 a.m., further reports came in that people were being let in the east door to the Legislative Assembly. The entrance trains at the East Door gradually grew more difficult and unpleasant. Those seeking entrance were physically and verbally abused. A few required medical attention upon obtaining access. Essentially, at around 9:15 or 9:30, OPSEU picket captains and security marshals lost control of the situation at the east door for a period perhaps as long as 1 1/2 to 2 hours. Picket captains and marshals were tried to maintain order and access but were not able to do so, at least for a period of time.

40. At 10:15 a.m., the east door was reported to have been shut down yet again. At approximately 11:00 a.m., a group of MPPs, escorted by Metro uniformed officers, and OPP plain clothes officers, approached the south door to the Whitney building. OPSEU protestors stood in front of the doors in great numbers, blocking the MPPs' entry. A stalemate ensued, during which police, MPPs, and protestors remained in very close quarters in the throng for approximately five to ten minutes. At this point, Mr. Leeb, who was on the scene, called PC Lazzotte, who was approximately ten feet away from him, on his cell phone. He indicated to Lazzotte that this was not going to work, and asked if Metro could "get these guys out of here". After a few minutes, the officers and MPPs left the area. Mr. Leeb's reaction was that this was the way the picket lines were supposed to work.

41. At approximately the same time, the situation at the east door was such that Mr. Adams, head of one of the security teams, attended at the door and use his bullhorn to address the crowd. It was evident that no one was getting in at this point, so in order to avoid the potential for injury involved in pushing through the crowd, Adams requested that the east legislative doors be locked from the inside, in an attempt to settle the crowd down.

42. At approximately 11:18 a.m. the OPP radio log records that some persons did get in the east Legislative door. At about the same time, Mr. Leeb received a call from OPSEU lawyers in court, who indicated that they needed someone to come and attend at the courthouse. Mr. Leeb made the decision that he was the appropriate person for the job, and left to court soon after. He did not return to Queen's Park until much later in the day.

43. At approximately 11:30 a.m., OPSEU picketers who had formed a line at the top of the loading ramp leading to the north end of the Whitney Building saw the OPP CMU emerge from the ramp. The CMU stopped shy of the chain which barred the ramp, and on the sidewalk side of which the OPSEU members had remained. During this initial foray, OPSEU picketers and captains responded to requests to step aside to allow access to people who would be coming with shouts, cat-calls and refusals.

44. The CMU then inexplicably withdrew down the ramp, only to appear again several minutes later, and step over the chain into the crowd, pushing them back with their shields. Some OPSEU members held their ground, but were pushed aside, or hit with police batons. After several MPPs were escorted through the crowd and down the loading ramp, the CMU withdrew into the building, leaving at least one injured protestor in the hands of Metro officers and Metro Ambulance personnel.

45. At 12:00 noon, as scheduled, speakers spoke at the south lawn, which drew much of the crowd away from other doors that they were picketing. At 12:15 p.m., it was reported that the east door was quiet.

46. Because of the activity at North Whitney, at approximate 12:45 p.m., Gary Adams and his security marshal team went to police headquarters, with an eye to offering assistance to Metro police should any more MPPs require access. This resulted ultimately in a conversation between Adams and Staff Inspector Taverner, Sergeant Muscat and PC Glavin. During this conversation, the security marshals offered their assistance in getting MPPs into the North Frost Building, where it was known the next access point was going to be. In addition, they recommended another plan, involving driving the vans with MPPs in them into a loading ramp. This alternative plan was rejected by the police, but after some discussions, Metro agreed to the use of the marshals for the North Frost plan.

47. As OPSEU understood the plan, they were to be afforded the opportunity of addressing the crowd in an attempt to convince them to step aside and allow entry of the MPPs. Only if this was not effective were Metro officers then going to step in to assist and escort MPPs into the buildings. OPSEU was not expecting the CMU to appear at all.

48. The security marshals left 40 College with these expectations. However, when they arrived at the North Frost Building, the CMU was already deployed. The marshals, seeing this, attempted to assist in whatever way possible, by inserting themselves between the east line of the CMU cordon, and the protestors. The east side was markedly more peaceful than the west side where batons and pepper spray were used. While the east side was assisted by the presence of a wheelchair ramp which prevented the crowd from rushing forward, the marshals evidently had an impact.

49. After the CMU had withdrawn back into the Frost North Building, Gary Adams and his security marshals met for a debriefing on the south Whitney lawn across the street. From there, they moved over to the south Legislative lawn, and were hence not in view of the North Frost Building when MPP Al Leach attempted to gain access to that building at approximately 1:45 p.m.

50. At approximately 2:00 p.m., the scheduled end of the OPSEU demonstration, protestors and picketers were dispersing, returning on buses to their out-of-town locations, and in short order there were very few people left at Queen's Park.

Critique of OPSEU's Actions During the Strike at Queen's Park

51. OPSEU knew or assumed it knew the policy of Metro. It apparently did not know, however, that a divergent policy for the day was to be authorized by the Speaker and implemented by the OPP. It should have been provided with this information, but it also should have obtained it for itself. In the other direction, OPSEU should have ensured that at least Metro, of whose existence they were well aware, knew of such details as the time schedule for 18 March. Being deferred on one phone call does not excuse a complete failure to communicate, and when opportunities for communication did arise on the

morning of the 18th, it was not the time for understatement or the holding back of information.

52. Although the letter sent from the Clerk of the House on 14 March arrived late in the day, OPSEU should have reacted in some way to the letter and in particular should have contacted the Speaker's Office and members of their own planning Task Force after receiving the letter to discuss how it intended to proceed. As with any number of other things that might have got people to talk to each other, this letter fell through the cracks and another opportunity to avoid what occurred was lost.

53. OPSEU's aggressive position with respect to the MacDonald Block was also a contributing factor to the chaos on the day and could easily have been anticipated as such. If access to the MacDonald Block were shut off then it was only to be expected that persons seeking access would hear of and flock to the only open door. This again points out the insufficiency of the plans made to make sure the east door remained open.

54. In general, there was an insufficient exchange of information within OPSEU and between OPSEU and the police. Without that exchange of information, OPSEU and the police were dangerously in the dark in their planning for 18 March, and OPSEU came up with a plan that ran a real risk of blockage. Even without the knowledge of the special plan of the Speaker and the OPP, OPSEU should have taken pains to ensure that there was no loss of control at the east door.

55. The right of the union to strike and to communicate is, in law, undoubted. However, the right to bar or block access by Members is, at law, undoubtedly nonexistent. Further discussion of these issues is found in Appendix E(1) and (2). Translating this down to the situation at Queen's Park on 18 March one should start with the question - is the Legislative Precinct a place where OPSEU members can set up a picket line and conduct otherwise routine bargaining, picketing and peaceful demonstrations. The answer must be yes, as long as access to the Legislature for Members of the Provincial Parliament is not hindered.

APPENDIX D(5)

THE GOVERNMENT OF ONTARIO

Structure of the Government of Ontario

1. The term Government of Ontario in this report is used to refer to the Executive Branch of the Ontario government. Generally, the Executive Branch consists of a variety of ministries, each headed by a Member of Provincial Parliament representing the governing party in the House. Employees of these ministries, including those in management positions, are members of the Public Service of Ontario. Many of these employees are represented in their bargaining with the government through the Ontario Public Service ("OPS") bargaining unit of OPSEU.
2. Two separate Ministries of the Government of Ontario must be considered with respect to the events of 18 March. The first is the Management Board of Cabinet. Staff of the Management Board who report to the Secretary constitute the Management Board Secretariat ("MBS"). This entity was responsible for the negotiation of labour issues with OPSEU before and during the strike, a function with which this Commission is not concerned. It is concerned with the strike response planning, policies and information gathering of the MBS, which will be discussed below. The Chair of the Management Board of Cabinet was at all material times The Hon. David Johnson. A representative of the MBS, Malcolm Smeaton, gave evidence before the Commission. Secondly, the OPP reports to and is responsible to the Ministry of the Solicitor General. The Solicitor General leading up to and including 18 March was The Hon. Robert Runciman.
3. The Government of Ontario was represented before the Commission as The Queen in Right of Ontario, through the office of the Attorney General.

Preparation by the Government of Ontario for 18 March

4. At least to some extent, the Government of Ontario began planning for the eventuality of a strike by government workers as early as 1993, when those workers were given the right to strike, although it intensified in late 1995, as a strike seemed increasingly possible and imminent. In order to present a unified response to strike action, the government established a Corporate Strike Response Team, made up of people from various ministries with expertise in a number of different areas which would be either influential or affected in the event of a strike.

5. During the later months of 1995, this team produced a number of volumes directed at giving instruction to those in management positions as to how to react to a strike, either legal or illegal. These documents were updated from time to time, as more information became available, and questions that were asked frequently were answered.

6. By February 22, 1996, all Deputy Ministers were advised that a system of decision making had been put in place and specific areas assigned to Ministry Strike Response Team. Mr. Smeaton was the executive responsible for the Corporate Strike Response Centre at MBS. As will be seen, lawyers from the office of the Attorney General assisted the MBS in setting up and operating a system that dealt with 81 injunction applications in the course of the strike.

7. Prior to the strike, and during its course, the Government of Ontario established and followed a set of guidelines and procedures which related to government buildings and facilities across Ontario, excluding the Legislative Precinct, which was under the jurisdiction of the Speaker. It is important to remember that the balance of Queen's Park Complex including the MacDonald Block, the Frost Buildings and a portion of the Whitney Block were under the jurisdiction of the Government of Ontario through the MBS.

8. In this regard, the MBS established a very detailed and impressive system for centralizing and co-ordinating information, decision making as to seeking injunctions and policies and practices for dealing with contentious issues during the strike including an exhaustive manual as to how to react where picket lines interrupted access to government premises. In particular, the MBS policy was not to use force to obtain access through picket lines, but rather to seek judicial intervention. A complete system and checklist was created of steps which managers should go through, including unsuccessful non-violent attempts by the police to assist, before an injunction would be sought. The MBS were aware during their planning and production of this information that it would almost certainly end up in the hands of OPSEU, and viewed this in part as a method of dissemination of information.

9. The MBS had applied this approach in relation to the Queen's Park Complex and obtained an injunction with respect to the TTC's tunnel access point on 12 March, 1996. According to Smeaton, the MBS was responsible for approximately 5,000 buildings that were picketed throughout the province and during the strike there were probably close to 10,000 significant picket lines. There were 81 separate applications dealt with during the strike across Ontario. Some were contested, some were resolved and some were resolved with the assistance of the judge.

10. Either on the first day or early on in the strike, there was immediate contact between the government lawyers and OPSEU's lawyers, and a joint system was set up

to allow for the majority of injunctions, wherever the dispute, to be heard in Toronto. The OPSEU lawyers made arrangements to accept service for OPSEU and the assistance of the courts was obtained in setting up a panel of highly qualified judges who were available on short notice to meet to decide issues and to otherwise assist the parties with respect to applications.

11. In addition, there was an information system set up whereby significant incidents or events were reported to a central place at MSB and then collated, and information provided back to the Ministries. This was an excellent and efficient system set up to cope with the largest strike in Ontario history.

12. During the week prior to 18 March, assistance was offered by the MBS, to the Speaker's Office. The Speaker declined the offer on the basis of maintaining its independence.

13. Staff Sergeant Moores of the OPP, head of the OGPS contingent in Area Command was at least partially aware of the system set up in the other areas, having provided an affidavit to the in support of the 12 March injunction.

14. With respect to the Ministry of the Solicitor General, it is clear that operationally, the OPP reports to its Commissioner, and not to the Solicitor General. The Solicitor General would not be consulted on a matter of how best to approach a potential situation or incident, and was not consulted with respect to 18 March.

15. There was no evidence that there was political input from any department of the Executive Branch into the security planning for 18 March 1996. Indeed evidence to the contrary was presented by the OPP and the Speaker. Further, the OPP apparently did not seek the permission of any Ministry to use access points outside the Legislative Precinct to bring in MPPs and essential staff of the Legislative Assembly on 18 March 1996.

Actions of the Government of Ontario on 18 March

16. As planned by OPSEU, it appears that there were complete blockages from time to time in the Queen's Park Complex outside the Legislative Precinct. The MBS dealt with these blockages in its usual manner by seeking an injunction, which, at the direction of Winkler J., was heard after the Speaker's.

17. There does not appear to be a shred of evidence to suggest that the Government of Ontario or any member thereof including Cabinet Ministers directed or influenced decision makers at the OPP on the day to use force or deploy the CMU to obtain access for MPPs. As there is always an element of speculation in this regard, it is important

to stress that the evidence of all the OPP witnesses was that there was no such interference or input whatsoever.

Critique of the Government of Ontario's Actions at Queen's Park

18. It follows from what is set forth above that while there should have been communication between the Government of Ontario and the Speaker, the primary responsibility for that not occurring lies with the Speaker.

APPENDIX D(6)

MEMBERS OF THE PROVINCIAL PARLIAMENT

1. The 130 Members of the Legislature are by historic tradition, divided into the political parties represented in the House. On 18 March 1996, save for one Member sitting as an independent, and the Speaker, who performs the apolitical function of the presiding officer in the proceedings in the Legislative Assembly, the Members of the Legislature were affiliated with three parties: the Progressive Conservative Party (PC), the Liberal Party (Liberal) and the New Democratic Party (NDP). The number of Members affiliated with each party were as follows:

PC	81
Liberal	31
NDP	16
Independent	1
The Speaker	1
TOTAL	130

2. Each caucus has a staff who are not members of the Public Service of Ontario. Only the caucus staff of the NDP are unionized, and they are represented at the bargaining table by OPSEU. A representative of each caucus testified at the hearings: Barbara Cowieson, Deputy Executive Director of the PC caucus, Patricia Sorbara, Principal Secretary to Liberal Party Leader Lynn McLeod, the Leader of the Opposition, and The Hon. David Cooke, House Leader of the NDP caucus.

3. Technically, the Legislative Precinct is the site where the work and business of the Legislature is conducted, and not the work of the government as employer of the Public Service. It is the facility where legislation is adopted by persons selected by the voters of the province to do so. The Cabinet Ministers, being the Executive Council, of course sit in the Legislature on the majority side, but in that capacity and function, they are not the employers of the Public Service of Ontario as represented by OPSEU, but are part of the Legislative body.

4. The difficulties of a person in the position of the Members, including Speaker on an occasion such as occurred on 18 March are complex and manifold. On the one hand, the Member has been elected by the constituents to represent them in the House whenever it is in session. This role could not be performed if the Member refused to cross the picket line established by the employees' union, or was blocked at the entrance. On the other hand, Members who voted against the position advocated by the union were subjected to delays, obstructions, and blockage. Influenced by political affiliation and differences prevailing at the time, the three caucuses made different

arrangements with their members, with OPSEU and with the Speaker for access to the House during the strike and specifically on 18 March. For this reason, the caucuses will be considered separately.

(1) THE PROGRESSIVE CONSERVATIVE CAUCUS

Preparation for 18 March by the PC Caucus

5. The evidence suggests that the PC caucus put most of their faith with respect to strike planning and access in the hands of the Speaker's Office. Indeed, it appears that the Sergeant-at-Arms confirmed that the Speaker's Office was taking care of matters, and that all three caucuses would be informed of plans when necessary. The PC Caucus pressed for details which were not forthcoming.

6. In this context, the caucuses essentially remained outsiders to the security planning which was taking place between the Speaker's Office and the OPP/OGPS for the strike generally and for 18 March in particular. The SMEAC document was prepared without the knowledge of any caucus, including the PCs, and the Party was not in contact with either Metro or the OPP. Instead, the PC caucus simply followed the instructions provided by the Speaker's Office in the form of the Bulletins to Occupants of the Legislative Precinct, and updates from the Sergeant-at-Arms to Ms. Cowieson.

7. The PC Members appeared, from the evidence, to have suffered the greatest interference and hindrance of any of the MPPs when attempting to enter the House in the course of performance of their duties as elected Members. This was to be foreseen, as those Members supported the government position now under challenge by OPSEU, its members, and its supporters in the strike. It is obvious that the Legislature could not function as it is designed to do in the absence of Members of the government party excluded from the House by the purported exercise of rights under the labour relations law.

8. During the early days of the strike, there was not a great deal of difficulty with access to the Legislative Precinct. However, as the strike wore on, and tensions mounted, PC Members began to experience problems. Members were being asked to stop for up to 25 minutes before entering the Legislature. Ms. Cowieson, concerned that such delays were not legal, spoke to the Sergeant-at-Arms on the matter, and inquired as to the possibility of injunctive relief. The Sergeant-at-Arms conceded that the delay was not legal, but requested that PC Members tolerate a 15 minute delay at the east door in the interest of preserving the peace, as the delay was not causing major problems. Ms. Cowieson acquiesced, and this information was passed on to PC MPPs who inquired. The delay was observed for the most part where necessary, although

some PC MPPs individually chose not to respect or observe any delay to their access to the Legislature, arousing no small antagonism at the east door picket line.

9. On 7 March, 1996, Douglas Ford, a Conservative MPP arrived at the east door of the Legislature, to be met by a picket line which requested that he wait out a 15 minute delay. When Mr. Ford refused to do so, he was physically prevented from entering the building. The confrontation was prevented from becoming more serious by the arrival from inside the building of a plain clothes OPP officer of the LSS, who accompanied Mr. Ford inside.

10. A similar incident arose on 12 March, 1996, when The Hon. David Johnson, Chairman of the Management Board of Cabinet, and hence the minister responsible for continuing negotiations with OPSEU at the bargaining table, and a staff member, Mr. David Bogart, were impeded in getting access to the Assembly. Mr. Johnson was escorted to another entrance by an OPP officer, and the other staff member waited the 15 minutes, and was then let into the building.

11. On 12 March, 1996, there was evidently some confusion within the PC caucus. A caucus staff member, Alexander Roman, had apparently spoken to a representative of the ORC, who had advised that a protocol had been negotiated with OPSEU, providing for a 15 minute delay of people entering the building, including MPPs. To pass this word along, Mr. Roman sent an e-mail memorandum to the members of the caucus in these words:

Just a note to let you know that OPSEU is now within its "rights" to prevent you from entering the Legislative Building, the seat of Her Majesty's Parliament of Ontario, for up to 15 minutes at a time. This "agreement" was reached yesterday. We are asked to be patient, wait and then enter the building quietly. Thank you for your kind cooperation!

12. Following this memorandum, it was discovered or clarified that in fact no such agreement or protocol had been concluded. Nonetheless, no follow-up memorandum was sent to the caucus members.

13. Again, on 14 March, 1996, another PC MPP, Wayne Wettlaufer, along with his Executive Assistant, and a member of the press who worked in the building, refused to wait a delay before entering the east door. Although ultimately successful in gaining access, the three were impeded, pushed and shoved by picketers as they tried to get in.

14. Also on 14 March, a staff member in the Premier's Office, Bill King, sent an e-mail memo to the caucus with respect to the opening of the House on the coming Monday. The content of the memorandum is somewhat ironic in light of Mr. King's

prominence on television on 18 March 1996 but indicates the both the PC approach, and the concerns about the impending House opening. In part, it reads:

First of all, we're asking all Members & staff to come in as early as possible in order to accommodate any potential delays on the pickets (sic) lines. As always, please do not verbally or physically inter-act with the picketers - it makes for lousy television and looks bad on us all.

The best advice is to wait if asked to wait, and enter when allowed. If you are 100% blocked from entry, do not try to force your way in. Speak to a police officer, or call the emergency number that is being provided to your offices by the Whip's Office and GMS today and tomorrow. Once you call the number, we will arrange (sic) for your safe passage (sic) into the building.

If all else fails, it's better to simply go home, rather than ending up on the evening news making all of us look like a bunch of thugs. Let's leave that to the union bosses - who'll have to account for their actions!

...

Again, let's keep our cool and be professional at all times. Sinking to the level of those who want confrontation is no solution at all.

15. On 15 March, 1996, Ms. Cowieson was approached by the Sergeant-at-Arms, who advised her of the plan for access for 18 March. First, members were to attempt to arrive early to avoid the picket lines altogether. Second, they were to arrive at the east door, waiting for the 15 minute delay as usual if requested to do so. Third, the Sergeant-at-Arms advised of the plans made by the OPP escort MPPs into the building at 11:00 a.m. on 18 March. Ms. Cowieson testified to having been unaware of the details of the plan, simply that PC MPPs, if unable to gain access, were to report at 11:00 a.m. to the parking kiosk located on the driveway on the south-east lawn of the Legislative Building. The OPP would then ensure their access. The remainder of 15 March was taken up in conveying this information to the Conservative MPPs, many of whom were away from Toronto, in their home ridings.

Activities of the PC Caucus on 18 March

16. Many of the PC caucus Members followed the advice to arrive at the Legislative Building early, prior to the establishment of the picket lines, so as to avoid problems. There were even reports of people remaining overnight in the building so as to ensure that there would be no difficulty with access. Early in the morning, as the picket lines were being set up, there were minor incidents in which MPPs arrived and, refusing to wait a 15 minute delay, literally overran the physical opposition of the few

OPSEU picketers who had arrived. By 8:30 a.m., about a quarter of the 81 PC caucus members had gained access to the building.

17. By this time, the crowd at the east door had grown, making it increasingly difficult and occasionally impossible to enter via the east door. Shortly after 8:00 a.m., The Hon. Al Palladini, Minister of Transportation, arrived by car at the driveway to the east door. As he walked toward the door, he was met by picketers, and quickly concluded that he would be unable to gain access to the east door. He returned to his car, which was escorted away from the site by OPSEU security marshals. Similarly, the Solicitor General, The Hon. Robert Runciman, spotted by media cameras, approached the east door, and came to the conclusion that he, too, would not even attempt to enter via the east door, given the size of the crowd at that location.

18. Many PC members were able to enter the Queen's Park complex via the rear doors to the South Frost building. The OPP deployed its CMU twice in the morning, at about 8:30 and 8:45 a.m., escorting three or four MPPs into the building on each deployment. Two Metro officers were then able to secure access for approximately 35-40 MPPs at the same location by talking to the crowd at about 9:00 a.m.

19. Meanwhile, the evidence was that a number of PC MPPs, including the Premier, and staff were gaining access by hook or by crook, through a variety of entrances throughout the complex. The evidence was that once an unguarded door was used to introduce MPPs into the building, it would be discovered by OPSEU picketers, who would then post people to prevent it from being used again. While some of these entries were uneventful, the Commission received testimony and saw video evidence of MPPs and staff being verbally abused, pushed, pulled, shoved and even bitten in their attempts to enter by other doors.

20. A number of PC Members followed the plan of the Sergeant-at-Arms, and reported to OPP officer at the parking kiosk. At 11:00 a.m., the group was escorted by Metro and OPP officers on foot to the south door to the Whitney building. There, their passage was completely blocked by picketers and demonstrators, who had flooded to the stairs to the door when they realized the intentions of the MPPs. After a stand-off of several minutes, the group left the scene, and the MPPs were loaded into police vans belonging to Metro, and driven away from the area.

21. At about the same time, two MPPs had attempted to enter via the east door to the Legislative Building, and found themselves unable to do so. These two were escorted away from the scene by Metro officers, and also driven away in Metro vans.

22. Approximately eight of these MPPs gained access to the complex during the North Whitney deployment of the CMU at 11:30 a.m.. After this point, MPPs were

advised to report to Metro headquarters, and later to Maple Leaf Gardens, to assemble for a group access plan. About 15 or so Members then gained entry during the incident at the North Frost building, at roughly 1:30 p.m.

23. A final incident involved The Hon. Allan Leach, Municipal Affairs Minister, who arrived at the North Frost building shortly after the CMU had withdrawn back inside. There was still a sizeable crowd in the area, who reacted to the arrival of Mr. Leach by blocking his way, pushing him, shouting at him and spitting on him. After a vain effort to enter the building, Mr. Leach withdrew, to gain access elsewhere.

Critique of Actions by the PC Caucus

24. The PC caucus, for the most part, appears to have been kept in the dark with respect to the planning for security and access for 18 March. They were unaware of the plan for use of the CMU, or the methods by which those plans were carried out. They were evidently content with reliance on the Speaker's Office, who had indicated to them that they had the situation under control.

25. At most, the PC caucus can be faulted for having contributed to the mixed messages which were being sent to members of OPSEU earlier during the strike. The party as a whole had adopted a policy that it did not mind waiting out a delay before entering. However, it appears that this policy was not effectively communicated to all party members. Further, there were evidently some Members who would not have been interested in following such a policy, were it to be disseminated. The end result was that OPSEU believed that it was able to delay Members, and became frustrated, angry and sometimes violent with those who would not wait.

26. The adoption of a uniform policy to be followed by, or imposed upon, all members within a caucus for reaction to a strike situation would have allowed for a better conveyance to OPSEU of the expectations of the caucus, and thus what OPSEU could expect in response to their actions. If a uniform policy were not adopted, the caucus should at least have adequately conveyed their decisions and approach to its membership, and preferably to OPSEU as well, such that they would be aware that concession to a delay by some would not entail concession by all. The fact that the PC caucus, in its executive form, was in discussions with OPSEU at the bargaining table should not have prevented communication to OPSEU from the caucus in its legislative form, underscoring the difference, and the principles which entitled them to access. The other parties, as will be seen, had taken the initiative to contact OPSEU on the question. The PC caucus, despite their position, would have been well advised to do the same. These are very slight criticisms. It is clear that some of the individual MPPs in this caucus were physically abused on the day. There can be no possible excuse offered or accepted for this, which is thuggery, plain and simple.

27. It should be stressed however that there is no evidence that members of the majority party attempted to use their position as government to instruct or interfere in the police function.

(B) THE LIBERAL CAUCUS

Preparation for 18 March by the Liberal Caucus

28. Prior to the OPSEU strike vote, The Hon. Dwight Duncan, the Liberal Labour Critic, spoke by telephone with Heather Gavin, Executive Assistant to OPSEU President Leah Casselman. The discussion related to a number of issues, including access of Liberal Members to the Legislative Building during a strike. Follow-up correspondence between the two resulted in a letter from Ms. Gavin, dated 22 February, which included the following paragraph:

Please be advised that OPSEU does not intend to impede members of the Legislature who share a common goal with OPSEU members – that of ensuring that Quality Public Services are delivered to the citizens of Ontario. However, I am sure you will understand that Liberal members who take sides with the government can expect a different reaction from OPSEU members who are on the picket line fighting for their families' futures.

29. No-one in the Liberal caucus conveyed this information or arrangement to either the other caucuses, or to the Speaker's Office. In the other direction, the Speaker's Office did not seek input or information from concerning the implementation of the security plan, or questions of access of Liberal MPPs.

30. Once the strike began, some Members of the Liberal caucus chose to show their support for the OPSEU cause by joining the picket lines for a period of time before entering the building. Others typically waited out any protocol which was requested. During the earlier, less strident weeks of the strike, access was not a problem for Liberal MPPs and staff members.

31. As picket line pressure increased, Ms. Sorbara, who had been in communication with Ms. Gavin during the holiday absence of Mr. Duncan, confirmed with OPSEU that the Liberal agreement for access still continued. Ms. Sorbara put rumours of an intended shut-down of Queen's Park for 18 March to Ms. Gavin, who denied such a plan.

32. On 15 March, the Friday before the opening of the House, the Sergeant-at-Arms spoke to Ms. Sorbara, advising her of a plan to assist Liberal MPPs with access at 12:00 noon, if other measures, such as arriving early and waiting out delays, were

unsuccessful. Ms. Sorbara was interested in hearing of the plan, but stated that the Liberals did not expect problems with entry, although again she did not disclose the existence of an arrangement with OPSEU. She also advised the Sergeant-at-Arms that Liberal MPPs were not interested in going through a picket line with security assistance, and that they would rather wait or stay out of the building altogether. The members of the Liberal caucus were advised of the caucus' approach to Monday, and of the 12:00 security plan on the Friday and over the weekend, such that all were aware of the plan prior to 18 March.

Activities of the Liberal Caucus on 18 March

33. As had taken place earlier in the strike, some Liberal MPPs walked the picket line at the east door of the Legislature prior to entering the building. Some simply waited out whatever delay was being imposed at the east door, and entered after that.

34. However, when circumstances were such that blockage occurred at the east door, Liberal caucus members were unable to gain access as they had in the past. Ms. Sorbara testified that at one point she lead a number of Liberal MPPs in a circumnavigation of the Legislative Building, searching for a door through which entry might be had. When this proved bootless, she was ultimately able to escort the MPPs, with the assistance of some picketers who recognized the MPPs, through the crowd at the east door.

35. It appears that the 12:00 noon plan for escorting the Liberal and NDP Members never came to fruition, perhaps due the lack of success of the 11:00 a.m. plan with Conservative Members, or perhaps due to lack of need on the part of those Members. At any rate, it seems that all Liberal Members of the Legislature were able to get into the House in time for its opening at 1:30 p.m., largely without incident.

Critique of Actions by the Liberal Caucus

36. The Liberal caucus was party to an arrangement with OPSEU which had implicit overtones that PC Members might experience difficulty or delay in entering the House. Despite knowledge of the principles of Parliamentary Privilege, including the right of access of Members, no attempt was made to advise OPSEU that such behaviour was not appropriate, or to advise the PC caucus or Speaker's Office that problems might arise that should be addressed. This silence created a form of tacit acknowledgement that differential delay or exclusion of Members on the basis of party affiliation was understandable or allowable. This did nothing to help resolve the issues which lead to conflict on 18 March.

37. Further, some Members were involved in picketing of the Legislature, and are thus subject to the same criticism on the matter as that which may be directed at

members of the NDP caucus who engaged in the same activity. Discussion of the effects of such picketing will be discussed in the following consideration of the actions of NDP Members.

(C) THE NEW DEMOCRATIC PARTY CAUCUS

Preparation for 18 March by the NDP Caucus

38. Shortly before the commencement of the OPSEU strike, the NDP caucus had the same concerns about access of its members as did the Liberal caucus. To this end, the Interim Leader of the party, The Hon. Bud Wildman, spoke to Ms. Gavin of OPSEU, and received a letter from her, dated 22 February, substantially similar to that received by Mr. Duncan of the Liberals. The letter indicated that OPSEU did not intend to impede Members who shared OPSEU's goals, and was encouraged by the NDP's offer of support through Members and staff walking the picket lines. This information was not passed on to the other caucuses, or to the Speaker's Office. As with the other parties, the NDP was not privy to the preparation or contents of the SMEAC security plan for the strike.

39. Once the strike commenced, the NDP caucus members typically arrived early to the Legislature, walked on the picket line along with OPSEU members and others and then entered the House, apparently without interruption or processing of any kind.

40. Mr. Cooke, the House Leader of the NDP, testifying before the Inquiry on behalf of the NDP caucus, frankly and freely discussed the strange position in which MPPs found themselves when confronted by the OPSEU picket line. The Members of his caucus had announced their sympathy for the OPSEU cause and had spoken in favour of the position of OPSEU, and had walked the union picket line to demonstrate support for OPSEU. At the same time, however, they were aware of their position as Members of the Provincial Parliament, and the fact that walking the picket line may have essentially amounted to self-picketing.

41. In the week before 18 March, the Sergeant-at-Arms approached the NDP caucus as he had other caucuses, with a view to discussing the security and access plans for the 18th. It appears that the discussion may not have got as far as specifying that there was in fact a plan afoot, as the Sergeant-at-Arms recalled that the NDP did not need to hear of a plan, while nobody in the NDP caucus recalls that a plan was ever discussed. One way or another, it was clear to the Sergeant-at-Arms that the NDP did not see themselves as in need of assistance in getting into the Legislature.

42. Instead, the NDP sent word to its members that the plan for 18 March was that the caucus should arrive early, participate in the picket line in the morning, and then

the caucus would enter the House *en masse*, as part of a political statement that the NDP were there as a group in support of the striking workers.

43. In order to confirm that access was not going to be a problem on the Monday, a representative of the caucus contacted OPSEU's head office again over the weekend, and received confirmation that OPSEU wanted the NDP members in the Legislature in order that they could take the government party to task during the Question Period.

Activities of the NDP Caucus on 18 March

44. It appears that everything went according to the NDP's plan on 18 March. Members arrived early, walked the picket lines, and ultimately entered the House together, save for one Member, who chose to respect the picket line, and participated in the picket for most of the day.

Critique of Actions by the NDP Caucus

45. The NDP, not surprisingly, took the opportunity of the OPSEU strike generally, and 18 March in particular, to add their voices to those in opposition to the government, and to achieve the political end of being seen doing so. However, in doing so, they put themselves in the peculiar position of becoming involved in a picket of the Government of Ontario, which had been imposing delays on Members of the Ontario Legislature of which group they were a part, in denial of those peoples' right to access, of which they knew. The end result was an odd conflict of interest between their position as third party in the Legislature, and their position as being politically and visibly in support of the Union against the Government.

46. The involvement of these Members in the picket lines which imposed such delays at the very least indicated to OPSEU that such delays were tolerable, being condoned by members of the very group being delayed. This added to the mixed signals which were emanating from Queen's Park concerning parliamentary privileges and access, and may have contributed to the loss of control over those picket lines which ultimately lead to the use of force to ensure Member access. While the connection is by no means direct, every contribution to the problem, and omitted possibility for avoidance, must be considered.

47. In addition, the NDP, like the Liberals, had made arrangements with OPSEU concerning access independently of the Speaker's Office, and had neglected to tell the Speaker of the development. The criticism of this behaviour parallels that of the Liberals actions in this regard, although it might be somewhat more severe in the case of the NDP caucus, given their well-known role as the voice of the labour movement in the House, as this position could have been used to increase, rather than decrease, the

level of communication between the Speaker's Office and OPSEU, such that all relevant rights and positions were known to the parties prior to 18 March.

APPENDIX E(1)

PARLIAMENTARY PRIVILEGE AND LABOUR LAW

1. Much argument and evidence was put forward as to the state of the law in these two difficult and occasionally arcane areas of the law. Inasmuch as the results of 18 March were based in part on the parties' understandings, assumptions and misconceptions of these areas of the law, this Appendix will address some of the relevant aspects of the concepts, and conclusions on their interaction.

(A) *The Law of Parliamentary Privilege*

2. In setting forth the law of parliamentary privilege that exists at present, the Commission has made use of and incorporated by reference a great deal of the detailed research set forth by counsel to the Speaker in their written submissions to the Commission. As can be seen in the Recommendations, the Commission does not accept that some or all of the areas contended for by the Speaker in his submissions are necessarily part of the parliamentary privilege or ought to remain with the Speaker. Nonetheless, the submissions of the Speaker provide a useful starting point for consideration of the issues of access and security in the Legislative Assembly.

3. The bottom line is that the privileges are those necessary to allow the Legislature to function. They were not engraved in stone in the 1600s in England to remain unchanged until the Apocalypse. The privileges ought to be given context by contemporary times, circumstances and threats or impediments to the independence and integrity of the legislative function. As an example, until 1974 it was not considered necessary for the Speaker to direct security in the Legislative Assembly. The Commission considers that for reasons of qualifications and efficiency, the Speaker ought not to have charge of security. There is no threat by the courts, monarchy or Executive Branch to cloud this issue nor can it credibly be suggested that this function must be run by the Speaker, as for most of the history of the Legislature it has not been. The label "parliamentary privilege" ought not to obstruct the issue of how best to do things.

4. The Commission finds the following paragraphs of the submissions of the Speaker particularly useful:

31. This body of privileges, known as "parliamentary privileges", refers to those rights and immunities enjoyed by legislative bodies, and their individual members, which are recognized as being necessary to uphold the dignity and independence of the Legislative Branch, and to ensure that it is able to discharge

its functions and conduct its proceedings free from any impediment. Maingot, in his treatise *Parliamentary Privilege in Canada*, summarized the concept this way:

Parliamentary privilege is the necessary immunity that the law provides for members of Parliament, and for members of the legislature of each of the ten provinces and two territories in order for these legislators to do their legislative work. It is the necessary immunity that the law provides for anyone taking part in a proceeding in Parliament or in a legislature. Finally, it is the authority and power of each House of Parliament and its legislature to enforce that immunity ... The legislative body needs this legal protection or immunity to perform its function and to defend and vindicate its authority and dignity. Members of the legislative body enjoy these rights and immunities because the legislature cannot act or perform without the unimpeded use of the services of its members...

Generally speaking ... the powers, rights, immunities and privileges of both the elected assembly and its members exist to enable the members to attend the assembly without disturbance, to enable the assembly to perform its functions, and to guard the functions of Parliament undisturbed. (*emphasis added*)

Maingot, *Parliamentary Privilege in Canada* (Toronto: Butterworth & Co. (Canada) Ltd., 1982), at pages 12-13, 15

Erskine May, *Treatise on the Law, Privileges, Proceedings and Usage of Parliament*, *supra*, at page 69

Kielley v. Carson (1842), 13 E.R. 225 at 234 (P.C.)

33. The Supreme Court of Canada had occasion recently to consider the question of parliamentary privilege in *New Brunswick Co. v. Nova Scotia (Speaker of the House of Assembly)*. The issue in that case was whether the Nova Scotia House of Assembly, in the exercise of its parliamentary privileges, was entitled to prohibit the use of television cameras in the House. A majority of the Court held that this action fell within the exclusive scope of the House's privileges, and thus was immune from review by the courts.

34. McLachlin J., who wrote the reasons for the majority of the Court, conducted an extensive review of the principles relating to parliamentary privilege in Canada. The following propositions can be extracted from her judgment:

- Canadian legislative bodies can properly claim as inherent privileges those rights which are necessary to discharge their legislative functions, and without which their dignity and efficiency cannot be upheld.

- The concept of parliamentary privilege is so fundamental to the proper functioning of our democratic system, that it is regarded as forming part of Canada's basic constitutional law.
- If a matter falls within the sphere of parliamentary privilege, it is immune from interference by other branches of our governmental system; all such questions instead fall to the exclusive jurisdiction to the legislative body to decide.
- In particular, the role of the courts is limited to determining whether a claimed privilege falls within a general category of privilege that is deemed necessary to the discharge of the Legislature's function; courts have no jurisdiction to review the specific instance of the exercise of privilege.

35. McLachlin J. summarized these points as follows:

It has long been accepted that in order to perform their functions, legislative bodies require certain privileges relating to the conduct of their business. It has long been accepted that these privileges must be held absolutely and constitutionally if they are to be effective; the Legislative Branch of our government must enjoy a certain autonomy which even the Crown and the courts cannot touch...

In summary, it seems clear that, from a historic perspective, Canadian legislative bodies possess such inherent privileges as may be necessary to their proper functioning. These privileges are part of the fundamental law of our land, and hence are constitutional. The courts may determine if the privilege claimed is necessary to the capacity of the Legislature to function, but have no power to review the rightness or wrongness of a particular decision made pursuant to that privilege. (emphasis added)

36. In his concurring judgment, Lamer C.J. also emphasized the importance of parliamentary privilege in safeguarding the independence of the legislature. As he stated (at page 354):

There is a clear parallel between the doctrines of independence of the judiciary and of parliamentary privilege as the latter is the means by which the Houses of Parliament protect their independence. In Canada, it is through the exercise of the privileges inherent in all legislative bodies that the provincial House of Assembly are able to control their own proceedings and thereby to maintain the independence of the legislative process. (emphasis added)

37. In summary, these privileges enjoyed by the House and its members are not an end in themselves. They are the means to achieving an end - namely to allow members to carry on their legitimate functions in serving the interests of their constituents and the public that elected them. That is a basic prerequisite of preserving the integrity and independence of the legislative process, which is itself fundamental to the rule of law in this province and country.

Roman Corp. Ltd. v. Hudson's Bay Oil & Gas Co. Ltd. (1972), 23 D.L.R. (3d) 292 at 299 (Ont. C.A.)

Transcript of Proceedings, May 13, 1996, at pages 36-37 (DesRosiers)

38. Precedent and practice have established a series of parliamentary privileges. Some of these privileges are said to be enjoyed by members individually, whereas others are said to be corporate or collective privileges. Examples of individual privileges include:

- freedom of speech;
- freedom from arrest in civil process;
- exemption from jury service;
- exemption from attendance as witnesses during sitting of Parliament; and
- the general freedom from obstruction in carrying out parliamentary functions, including freedom of access to the Legislative Precinct.

Examples of corporate privileges enjoyed by the House in its collective capacity are:

- the right to have the attendance and service its members;
- the right to regulate its own internal affairs and procedures free from interference; and
- the right to provide for its proper constitution and to settle its own code of procedure.

Maingot, *Parliamentary Privilege in Canada*, *supra*, at pages 14-15

Erskine May, *Treatise on the Law, Privileges, Proceedings and Usage of Parliament*, *supra*, at pages 70-82

Beauchesne's Rules & Forms of the House of Commons of Canada (Toronto: The Carswell Company Limited, 1989), 6th ed., at pages 14-21, 22-27

Odgers, *Australian Senate Practice*, *supra*, at pages 6370638

New Brunswick Broadcasting Co. v. Nova Scotia (Speaker of the House of Assembly), *supra*, at pages 385-386

39. Many of the more prominent categories of parliamentary privilege have been codified in Ontario in the *Legislative Assembly Act*, including freedom of speech, freedom from arrest and freedom from service of civil process. The *Legislative Assembly Act*, however, also contains a saving provision in section 53 which provides that "nothing in this *Act* shall be construed to deprive the Assembly or a committee or a member thereof any right, immunity, privilege or power that the Assembly, committee or member may otherwise have been entitled to exercise or enjoy".

Legislative Assembly Act, R.S.O. 1990, c. L.10, sections 35-40, 46-53

40. Section 46 of the *Legislative Assembly Act* also confers upon the Legislative Assembly all the rights and privileges of a court of record for the purpose of "summarily inquiring into and punishing, as breaches of privilege or as contempts", certain enumerated acts, including "assault, insult or libel upon a member of the Assembly", and "obstructing, threatening or attempting to force or intimidate a member of the Assembly". Any person found guilty by the Assembly of such a breach of privilege or act of contempt may be taken into custody by the Sergeant-at-Arms and jailed for such time during the session of the legislature as determined by the Assembly.

Legislative Assembly Act, *supra*, sections 46-49

41. The power to punish for contempt and breach of privilege is in its nature discretionary. It is also, in modern times, invoked only in the rarest circumstances. In the U.K., for example, the House of Commons has resolved formally to exercise its penal jurisdiction as sparingly as possible, i.e., only when satisfied that to do so is essential to provide reasonable protection for the House, its Members or its officers from substantial interference with the performance of their respective functions.

Maingot, *Parliamentary Privilege in Canada*, *supra*, at page 155

Erschine May, *Treatise on the Law, Privileges, Proceedings and Usage of Parliament*, *supra*, at pages 15, 135

Transcript of Proceedings, May 13, 1996, at pages 36-37 (DesRosiers)

42. One of the "time honoured" aspects of parliamentary privilege is the right of the members of a legislature to have free and unimpeded access to the legislative

precinct. This privilege of freedom from obstruction derives from the undoubted right of parliaments to the full service of each and every member. Without freedom of access, all of the other privileges, such as freedom of speech and the freedom of the House to conduct its own affairs, would be meaningless. Freedom of access is also the basis for more specific privileges, such as freedom from arrest and freedom from attending as a witness in outside proceedings.

Beauchesne's Rules & Forms of the House of Commons of Canada, supra, at page 33

Maingot, *Parliamentary Privilege in Canada, supra*, at pages 196-197

Erskine May, *Treatise on the Law, Privileges, Proceedings and Usage of Parliament, supra*, at pages 125-126

Odgers, *Australian Senate Practice, supra*, at pages 645-647

Halsbury's *Laws of England* (4th ed.), Volume 34 at para. 1501

43. Any interference with the access of members, therefore, constitutes a violation of parliamentary privilege and contempt of the legislature. As seen above, this has been codified in Ontario in section 46 of the *Legislative Assembly Act*, which provides that "obstructing, threatening or attempting to force or intimate a member of the assembly" constitutes a breach of privilege or contempt.

McLean v. Casselman, et al., unreported decision of Winkler J. Dated March 18, 1996 at pages 9-11

Legislative Assembly Act, supra, section 46

44. The right of unimpeded access to the legislature and its precincts also extends to officers and staff of the Assembly. Again, this is codified in Ontario in section 46 of the *Legislative Assembly Act*, which makes an "assault upon or interference with an officer of the Assembly while in the execution of his or her duty" a breach of privilege or a contempt.

Legislative Assembly Act, supra, section 46

Maingot, *Parliamentary Privilege in Canada, supra*, at pages 196-201

Erskine May, *Treatise on the Law, Privileges, Proceedings and Usage of Parliament, supra*, at pages 122-130

50. The absolute right of access to parliament is directly analogous to the absolute right to access the courts. This latter was strongly endorsed by the Supreme Court of Canada in *B.C.G.E.U. v. British Columbia (Attorney General)*. In that case, the Supreme Court of Canada upheld an *ex parte* injunction issued by the Chief Justice of British Columbia to prevent that Province's public service employees' union from picketing the courts. Dickson C.J. (as he then was) held that the inevitable effect of the pickets would be to impede and restrict public access to the courts, which would lead to a massive interference with the administration of justice, and impair the rule of law. As he stated:

Picketing of a commercial enterprise in the context of an ordinary labour dispute is one thing. The picketing of a court house is entirely another. A picket line both in intention and in effect, is a barrier. By picketing the court houses of British Columbia, the appellant Union, in effect, set up a barricade which impeded access to the courts by litigants, lawyers, witnesses, and the public at large. It is not difficult to imagine the inevitable effects upon the administration of justice... The point is clear. Picketing a court house to urge the public not to enter except by permission of the picketers would lead to a massive interference with the legal and constitutional rights of the citizens of British Columbia.

* * * * *

Acts which interfere with the persons having duties to discharge in a court of justice, including parties, witnesses, jurors and officers of the court, constitute a contempt ... Such conduct affects not only the particular interest of the parties to the case but also the public interest in the due administration of justice ... Conduct designed to interfere with the proper administration of justice constitutes contempt of court which is said to be "criminal" in that it transcends the limits of any dispute between particular litigants and constitutes an affront to the administration of justice as a whole ... It follows that McEachern C.J.S.C. and the British Columbia Court of Appeal correctly concluded that the picketing of the court houses in British Columbia constituted a criminal contempt. (*emphasis added*)

B.C.G.E.U. v. British Columbia (Attorney General), [1988] 2 S.C.R. 214 at 232-233, 236-237

51. It is submitted that just as access to the courts must be assiduously protected, so must access to the Legislative Assembly, the seat of democracy in Ontario. Like the courts, the Legislative Assembly is also an integral part of our system of governance and a key element of the rule of law; if it is the courts which apply the laws, it is the legislature that makes them. Accordingly, any attempt to bar access to the legislature is an attack on a basic aspect of our constitutional

system. As Winkler J. stated in granting the Speaker an injunction on March 18, 1996:

Delay and obstruction of entry and egress of Members and essential staff of the Legislative Assembly strikes a blow at the very heart of our society and is unacceptable. (*emphasis added*)

McLean v. Casselman, et al., supra, at page 11

52. The other key parliamentary privilege that is relevant here is the absolute right of legislative assemblies to regulate their own internal affairs. This is to ensure that the internal workings of the assembly are not subject to scrutiny or interference from outside bodies, which would represent a grave impediment to the independence of the Legislative Branch.

53. This principle is equally of long-standing authority. For example, Blackstone, in his *Commentaries*, summarized the matter this way:

The whole of the law and custom of Parliament has its origin from this one maxim, "that whatever matter arises concerning either House of Parliament ought to be examined, discussed and adjudged in that House to which it relates, and not elsewhere".

Blackstone 1 *Commentaries* 163, quoted in *Bradlaugh v. Gosset* (1994), 12 Q.B.D. 271 at 278

54. Many authorities can be cited in support of this principle. One such authority is the English Court of Queen's Bench decision in *Stockdale v. Hansard*, which is often referred to in this regard. *Stockdale* involved a libel action against Hansard, the parliamentary printers, who had printed a report by prison inspectors allegedly defaming the plaintiff. Several passages from the judgment of the Court have become classic formulations of the principle that the internal proceedings of the legislature are not subject to examination by outside bodies:

Whatever is done within the walls of either assembly must pass without question in any other place. (per Lord Denman)

* * * * *

Beyond all dispute, it is necessary that the proceedings of each House of Parliament should be entirely free and unshackled, that whatever is said or done in either House should not be liable to examination elsewhere. (per Patteson J.)

* * * * *

That the House should have exclusive jurisdiction to regulate the course of its own proceedings, and animadvert upon any conduct there in violation of its rules or derogation from its dignity, stands upon the clearest grounds of necessity. (per Coleridge J.)

Stockdale v. Hansard (1839), 112 E.R. 1112 at 1156, 1191, 1199 (Q.B.)

55. Another leading case in this area is *Bradlaugh v. Gosset*. There the Speaker of the English House of Commons refused to allow an elected member to take the parliamentary oath and assume his seat because of the member's atheistic beliefs. The House resolved further to have the Sergeant-at-Arms exclude the member from the Chamber, including by force if necessary. The member then sought a court order restraining the Sergeant-at-Arms, alleging that this action was contrary to the *Parliamentary Oath Act, 1866*. The Court of Queen's Bench held unanimously that it did not have jurisdiction to interfere in the House of Commons' internal affairs, including the House's decision to employ force. As Stephen J. stated:

The legal question which this statement of the case appears to have been raised for our decision is this: - Suppose that the House of Commons forbids one of its members to do that which an Act of Parliament requires him to do, and, in order to enforce this prohibition, directs its executive officer to exclude him from the House by force if necessary, is such an order one which we can declare to be void and restrain the executive officer of the House from carrying it? In my opinion, we have no such power. I think that the House of Commons is not subject to the control of Her Majesty's courts in its administration of that part of the statute-law which has a relation to its own internal proceedings, and that the use of such actual force as may be necessary to carry into effect such a resolution as the one before us is justifiable. (*emphasis added*)

Bradlaugh v. Gosset, supra, at page 278

56. Other examples of courts and tribunals holding that they do not have the right to impeach or question a legislature's regulation of its internal affairs include:

- *R. v. Graham-Campbell, ex parte Herbert*, [1935] 1 K.B. 594 - the manner in which the House of Commons arranges for the sale of alcoholic beverages within its precinct is an internal matter that cannot be inquired into.

- *Dingle v. Associated Newspapers*, [1959] Q.B. 405 - the procedural validity of a report of a select Committee of the House Commons cannot be impugned outside Parliament.
- *British Railways Board v. Pickin*, [1974] 2 W.L.R. 208 - outside bodies are not entitled to examine the manner in which a Private Bill has been passed by the House of Commons.
- *Wallace v. Attorney-General of British Columbia* (1977), 82 D.L.R. (3d) 423 (B.C.S.C.) - the Legislature has exclusive jurisdiction to determine the qualifications of its members.
- *Reference re Resolution to Amend the Constitution*, [1981] 1 S.C.R. 753 - the decision of the Senate and the House of Commons to pass a joint resolution regarding constitutional amendments is part of their "untrammelled authority at law ... to proceed as they wish in the management of their own procedure", and thus not subject to review.
- *Hute v. Minister of National Revenue* (1994), 85 F.T.R. 167 - Parliament's budgetary process is immune from scrutiny on the grounds that Parliament alone has the authority to determine its internal procedures.
- *Tafler v. British Columbia (Commissioner of Conflict of Interest)* (1995), 5 B.C.L.R. (3d) 385 (B.C.S.C.) - the investigation of the Commissioner of Conflict of Interest, an officer of the Assembly answerable to the Speaker, are not reviewed by the courts.
- *Canadian Union of Public Employees Local 3441 v. New Democratic Members of the Legislative Assembly*, *supra*, the Alberta Labour Relations Board has no jurisdiction to determine the status under Alberta labour legislation of employees of the Legislative Assembly.

57. There is no doubt that the exclusive privilege of the House to regulate proceedings within its own walls extends to providing for security within the Precinct.

Maingot, *Parliamentary Privilege in Canada*, *supra*, at pages 145-146

58. For example, it is clear that the House has the absolute right to order the removal or exclusion of "strangers" to prevent the disruption of its proceedings. Madame Justice McLachlin described the importance of this right in *New Brunswick Broadcasting Co. v. Speaker of the House of Assembly*, *supra*, where it was held

that the Legislative Assembly of Nova Scotia had the undisputed right to exclude television cameras from the Chamber:

In my view, this privilege is as necessary to modern Canadian democracy as it has been to democracies here and elsewhere in the past century. The legislative chamber is at the core of the system of representative government. It is of the highest importance that the debate in that chamber not be disturbed or inhibited in any way. Strangers, can, in a variety of ways, interfere with the proper discharge of that business. It follows that the assembly must have the right, if it is to function effectively, to exclude strangers. The rule that the legislative assembly should have the exclusive right to control the conditions in which that debate takes place is thus of great importance, not only for the economy of the legislative body, but to ensure its effective functioning. (*emphasis added*)

New Brunswick Broadcasting Co. v. Nova Scotia (Speaker of the House of Assembly), *supra*, at page 387; see also Lamer C.J. at page 364

Payson v. Hubert (1904), 34 S.C.R. 400

Gauthier v. Canada (Speaker of the House of Commons) (1994), 25 C.R.R. (2d) 286 (Ont.Ct. (Gen.Div.))

59. As McLachlin J. recognized, the right to the Legislative Branch to attend to its own security is a necessary condition of its independence and effective functioning. Indeed, it is now well-established that an outside police force cannot even enter the legislative precinct without the Speaker's permission, on the basis that the parliaments should be able to conduct their business without any outside interference or pressure whatsoever.

Maingot, *Parliamentary Privilege in Canada*, *supra*, at pages 146, 220-221

Browning, *House of Representatives Practice* (Canberra: Australian Government Publishing Service 1987), 2d ed., at pages 163-164

5. Everyone in Ontario is ultimately answerable to the House on matters within its purview. If the security system provided in these recommendations proves unsatisfactory if implemented, it no doubt will be fine-tuned or revoked at the direction of the House. What the Commission is attempting to recommend to the House is the best and most efficient method to achieve its policing and security needs. The invocation of the doctrine of parliamentary privilege as a justification to have the Speaker control security is misguided. It is necessary that there be security, it is not necessary that the Speaker run it when almost by definition, the Speaker will be unqualified to do so.

6. The right to unimpeded access is an undoubted parliamentary privilege. It was not asserted by the Speaker on behalf of the House at the direction of the House nor was it asserted in a timely or consistent fashion. In order to best safeguard the important values underlying the privilege, it should be. The recommendations of this Commission would see the express "carving-out" of the issue of access to the Legislative Assembly in the guidelines to all policing agencies and the clear and express direction as to how that privilege is to be implemented and the consequences if it is not respected. Again, it is open to the House to give modern shape to the right of access undoubtedly necessary to the functioning of the Legislature in this fashion.

(B) *Aspects of Labour Law*

7. Counsel for OPSEU and the OFL put forward considerable able argument on the status and basis of labour law in this country. At the same time, however, they correctly argued that it is not the position of this Commission to determine labour law or to attempt to define or change labour relations law in this province. To this end, it is not proposed to present a detailed analysis of all aspects of labour law, or to paraphrase the treatises on that complicated area of the law which are more suited to addressing the issue. Nonetheless, the circumstances at Queen's Park on 18 March 1996 were imbued with the flavour of labour relations law, and it is not possible to assess the actions of the participants without some reference to some basic principles of labour law as they stood at 18 March. Out of the numerous submissions before the Commission, however, only two principles are directly applicable to discussion of 18 March 1996.

8. Firstly, it must be recognized that no-one appearing before the Commission at any time questioned the ability of striking workers to picket, either under statute or as an exercise of their freedoms under the *Charter of Rights and Freedoms*. The importance of these freedoms cannot be overstated. Lawful pickets remain one of the most effective and necessary aspects of labour relations in this country. In addition, the right to exercise these freedoms through demonstration at Queen's Park was never questioned, and indeed was encouraged by all parties.

9. Secondly, OPSEU and the OFL put forward examples which demonstrate that the concept of a "protocol" is increasingly accepted and used in labour relations in the province. The use of protocols, or indeed any system to reduce picket line violence and to achieve compromise in the difficult world of labour relations disputes, is to be encouraged, and their use and ubiquitousness in modern labour relations is not in issue. However, counsel also correctly pointed out that protocols are a form of self-regulation and compromise between employer and employee, and appear in judicial orders on consent. It is not a unilateral imposition of delay by members of a striking union on a third party to the labour dispute. They were unable to point to any authority which suggests that imposition of a delay without negotiated compromise or judicial order is part of the normal acceptable course of picketing. Further, despite the testimony of a

representative of OPSEU that they were working in a "grey area" of the law, there was no law or evidence to show the Commission that unilateral imposition of a delay such as to block access to a building, whether the Legislature or otherwise, for a period of several hours and up to a whole day, is permissible as a matter of labour law, or is even a "grey area".

10. All of these aspects of labour law, however, fall to the wayside when the context brings the exercise of picketing rights or practices in conflict with the parliamentary privilege of access of Members of the Provincial Parliament to the Legislature. Judicial consideration has determined that exercise of the right to freedom of expression in the form of picketing cannot interfere with access to the courts. In *B.C.G.E.U. v. British Columbia (Attorney General)* (1988) 53 D.L.R. (4th) 1 (S.C.C.), the Supreme Court of Canada made clear the difference between picketing of a commercial enterprise and the picketing of a court-house, since the courts "dispose of hundreds of cases in which fundamental rights are at stake." On the motion to set aside the *ex parte* injunction in that case (1983), 2 D.L.R. (4th) 705, McEachern C.J.S.C. made the following statement:

The powers entrusted to the judiciary by the constitution are essential to the proper organization of society because, while common law and the Legislative Branches of the constitution declare what the rights and obligations of the people are, the judiciary is the machinery which protects and enforces these rights and obligations.

11. The same principle of non-interference must hold for the Legislature which declares "what the rights and obligations of the people are". The Legislature is the cornerstone of the democracy on which Ontario society is based. No exercise of a freedom, constitutional or otherwise, can interfere with the operation of this Legislature, for without the Legislature, there is no law, no rule of law, and no democracy. The absolute requirement of MPPs to be able to access the Legislature is and must be paramount.

12. It could be argued based on the analogy to the *B.C.G.E.U.* case that any picket line impeded access to the Legislative Precinct and was therefore a breach of parliamentary privilege. The House should consider whether it wishes to take the position as the Speaker relies on the analogy to this case. It does not appear from the tolerance of picket lines that this position would have substantial support.

13. The Commission notes that the same conclusion as to the relation between picketing and parliamentary privilege was reached by The Hon. Justice Winkler in his reasons for decision on the injunction motion brought on 18 March 1996 by the Speaker. The order of Winkler J., and his reasons for decision, can be found at Appendix F(4).

14. While it is true that OPSEU members and organizers cannot have known of the decision of Winkler J. before its being issued at 6:00 p.m. on 18 March, the fundamentals of this concept appear to have even been in the minds of OPSEU organizers when planning for the event of 18 March 1996. Gavin Leeb testified that in developing a plan for the day, he was aware that the Legislature could not be blocked, as this would lead to anarchy. The description is apposite. This approach was taken despite the intention to use the principles and practice of labour relations law to establish strong picket lines at the McDonald complex, to the extent of blocking doors completely. Even if the niceties of the constitutional debate are not necessarily accessible to every member of Ontario society, it is clear that the basic concepts were clear enough to occur to one untrained in parliamentary privileges and in the throes of organizing a massive event on a week's notice.

15. Once this principle is considered, then with respect to the question of access and delay, all arguments of OPSEU and the OFL concerning the applicability of labour relations to the Legislature come to naught. No citizen can block access to the Legislature, as discussed above. No demonstrating or protesting group can do it. The fact that those blocking access form a picket line does not alter the conclusion. As a matter of law, it is clear that a picket line that impeded access breaches parliamentary privilege. The consequences of that breach and whether and how force should be used are very different issues but there should be no misunderstanding that impeding access of an MPP to the Legislative Assembly by a picket line is anything but a clear breach of the law. Wrong-doers have rights but they are nonetheless wrong-doers.

APPENDIX E(2)

USE OF FORCE AND THE ROLE OF THE POLICE OFFICER

1. Not surprisingly, much evidence and argument was put before the Commission concerning the use of force by members of the OPP Crowd Management Unit against picketers and demonstrators on March 18, 1996. As stated at the outset, it is not the role or mandate of this Commission to make findings of civil or criminal liability, or to interfere with bodies established by the *Police Services Act*. To this end, it is more appropriate for other bodies to consider the issue of the use of force by specific officers, and whether or not their actions were in excess of their powers, duties and responsibilities. This Appendix simply provides a brief look at the complex law concerning the role of the police officer and the use of force.

Role of the Police Officer

2. Since the founding of the concept of the state-paid police constable, the common law has extended to that officer a special status in the community. First and foremost, the police officer has always been, and still is, entirely independent and free from interference from the offices of the state in the discharge of his or her duties as a police constable. At common law, the police constable can determine whom to arrest and against whom to lay charges. In all their other duties, police constables must conduct themselves in accordance with the oath of a police officer, free from any and all interference or direction from the state, except as expressed in statutes and regulations.

3. At common law, the general function of the police officer is the preservation of the peace, a function which yields a number of duties inherent in the role of the constable. In particular, the constable is under duties to prevent the commission of crimes, prevent breaches of the peace, protect life and property and execute warrants. In order to observe these duties, the police officer is granted certain powers, but these are not so broad as to provide justification for any action taken in the performance of a duty. In particular, the common law does not provide general powers of search or entry onto private property. Rather, conduct of an officer in the pursuit of a duty must be justifiable, and in particular can only interfere with the liberty and property of a citizen to the extent necessary for the carrying out of the duty, and in a manner reasonable having regard to the nature of the liberty interfered with and the importance of the public purpose served by the interference: *R. v. Dedman*, (1981) 59 C.C.C. (2d) 97.

4. These common law duties and powers have continued to this day and, except as they may have been altered by provincial or federal statutes, are part of the legal system

in which the policing duty and function is operating. The *Police Services Act* specifically maintains the common law duties and powers of the constable at common law.

5. Public police forces are hired necessarily by governmental entities. However, it is not possible to conclude from this that those forces are the agents or alter egos of the government to whom they ultimately report and by whom they ultimately are paid. Canadian law on this point has been settled for nearly a century, and is a reflection of the position of the police at common law in England. Even early police forces hired by corporate entities, such as those hired by the Canadian Pacific Railway, were found to be independent actors as soon as they took their oaths under statute: *Thomas v. Canadian Pacific Rwy. Co.* (1906), 14 O.L.R. 55 (Div. Ct.); *Nazarino v. Canadian Pacific Rwy. Co.* (1908), 11 O.W.R. 662 (H.C.).

Use of Force

6. The *Criminal Code* has specific provisions relating to the use of force. Notably, ss. 25, 27 and 30:

25. (1) Every one who is required or authorized by law to do anything in the administration or enforcement of the law

- (a) as a private person,
- (b) as a peace officer or public officer,
- (c) in aid of a peace officer or public officer, or
- (d) by virtue of his office,

is, if he acts on reasonable grounds, justified in doing what he is required or authorized to do and in using as much force as is necessary for that purpose.

...

(3) Subject to subsections (4) and (5), a person is not justified for the purposes of subsection (1) in using force that is intended or is likely to cause death or grievous bodily harm unless the person believes on reasonable grounds that it is necessary for the self-preservation of the person or the preservation of any one under that person's protection from death or grievous bodily harm.

(4) A peace officer, and every person lawfully assisting the peace officer, is justified in using force that is intended or is likely to cause death or grievous bodily harm to a person to be arrested, if

- (a) the peace officer is proceeding lawfully to arrest, with or without warrant, the person to be arrested;
- (b) the offence for which the person is to be arrested is one for which that person may be arrested without warrant;
- (c) the person to be arrested takes flight to avoid arrest;
- (d) the peace officer or other person using the force believes on reasonable grounds that the force is necessary for the purpose of protecting the peace officer, the person lawfully assisting the peace officer or any other person from imminent or future death or grievous bodily harm; and
- (e) the flight cannot be prevented by reasonable means in a less violent manner.

27. Every one is justified in using as much force as is reasonably necessary

- (a) to prevent the commission of an offence
 - (i) for which, if it were committed, the person who committed it might be arrested without warrant, and
 - (ii) that would be likely to cause immediate and serious injury to the person or property of anyone; or
- (b) to prevent anything being done that, on reasonable grounds, he believes would, if it were done, be an offence mentioned in paragraph (a).

30. Every one who witnesses a breach of the peace is justified in interfering to prevent the continuance or renewal thereof and may detain any person who commits or is about to join in or to renew the breach of the peace, for the purpose of giving him into the custody of a peace officer, if he uses no more force than is reasonably necessary to prevent the continuance or renewal of the breach of the peace or than is reasonably proportioned to the danger to be apprehended from the continuance or renewal of the breach of the peace.

7. These *Criminal Code* provisions are exceptions to the general rule that an assault on the person is a criminal act.

8. Further, section 42 of the *Police Services Act* sets out the powers and duties of police officers in Ontario, which parallel in many ways the common law duties of the constable:

42. (1) The duties of a police officer include,

- (a) preserving the peace;
- (b) preventing crimes and other offences and providing assistance and encouragement to other persons in their prevention;
- (c) assisting victims of crimes;
- (d) apprehending criminals and other offenders and others who may lawfully be taken into custody;
- (e) laying charges, prosecuting and participating in prosecutions;
- (f) executing warrants that are to be executed by police officers and performing related duties;
- (g) performing the lawful duties that the chief of police assigns;
- (h) in the case of a municipal police force and in the case of an agreement under section 10 (agreement for provision of police services by O.P.P.), enforcing municipal by-law;
- (i) completing the prescribed training.

(2) A police officer has authority to act as such throughout Ontario.

(3) A police officer has the powers and duties ascribed to a constable at common law.

9. The above legislation and the common law provides the boundaries for the legal application of force by a police officer in the execution of his or her duty. Whether the circumstances in which force was used by police officers on 18 March fell within these boundaries is an appropriate finding only for the courts and bodies created under the *Police Services Act*, and is outside the scope of this Commission.

10. With this caveat in mind, the following sections represent the Commission's views on certain aspects relating to policies and practices concerning the use of force.

Gradual Application of Force

11. Much evidence was put before the Commission on the subject of a general police policy of using a "gradual application of force" model. In this model, mandated by the Solicitor General, a police officer will use his or her discretion to assess a situation, and apply the amount of force minimally necessary to achieve a requisite goal. If that minimal response is insufficient, then increasing levels of force may be applied until the goal is achieved. This general theory will be applied in different ways in different circumstances. In particular, the gradations of force may be increased very rapidly in a situation in which the police officer finds him or herself in danger.

12. The range of force options available to a police officer range from the simple presence of the officer, through verbal communications, to the use of batons and sprays and finally up to the use of firearms.

13. As Sergeant Pearson testified before the Commission, one of the most valuable weapons in the arsenal of a police officer is his or her mouth. In other words, speaking with a citizen may in a given circumstance be the most effective route to ensuring their co-operation. It is clear that in many circumstances this will be an appropriate first step in approaching a potentially volatile situation. This certainly seems to have been the approach of the OPP to the issue of getting the assistance of demonstrators as Staff Sergeant Hough was armed with a megaphone which he used on a number of occasions to address the crowd. Sergeant Pearson and Staff Inspector Watson of the Metro Force also indicated their preference for this approach, and applied it in convincing the crowd to allow access of Members at the South Frost Building at 9:00 a.m.

14. What it also clear from the videotape evidence, however, is that, particularly at the North Whitney Building incident, there were a number of members of the crowd who refused to co-operate. This non-cooperative attitude with the police is also seen at the stalemate between police and picketers at the South Whitney Building at 11:00. It may therefore be, that even if good and effective verbal communication had taken place with the crowd, non-cooperation would have been the result. Nonetheless, verbal communication must be attempted in a meaningful and effective way if violence is to be avoided, and if the use of force continuum is to be properly applied.

Policing Standards and Guidelines

15. Also having an impact on police conduct on March 18, 1996 are the Solicitor General's Policing Standards Manual, and procedures created under it, which were the subject of much comment during the course of the Commission's hearings. As part of this manual, the Solicitor General advises that police services should establish procedures for police actions in a labour dispute. The basis for these guidelines is the theory that a labour dispute is a civil contractual dispute between an employer and its employees, to which the police should present a neutral face.

16. The manual indicates that the police service procedures should, among other things, indicate that the role of the police in a labour dispute is to preserve the peace, prevent the commission of offences, and enforce the law including offences against persons and property. Further, they should reinforce the neutrality and impartiality of the police, but this neutrality should not limit the responsibility of officers to preserve the peace, prevent the commission of offences and enforce the law.

17. Pursuant to the manual, both Metro and the OPP have labour dispute guidelines for its officers which parallel the manual. In addition, both forces adopt the policy that the police should not use force to open a picket line except in the case of an emergency.

18. The role of the police officer in a labour relations situation is subtle and complex without adding to his or her problems the implications of all of the relationships discussed in this report. The police officer is, in law, required to remain impartial and indifferent as between the interests of the employer and employee in a strike situation. The police officer is to maintain order in the community, interfere when violence arises, but always without fear or favour of either side. Safety and security of all persons and property is the main burden on the police officer in a strike. At the same time, the police officer must take into account that his actions must at all times safeguard the fundamental rights guaranteed by the *Charter* and analogous principles of law found in the *Human Rights Code* and elsewhere.

19. We do not here deal with such subtleties as when a police officer is required to cross a picket line in the course of discharging his duty. All of this police activity must proceed under the flag of neutrality and impartiality. Not without importance is the policing convention that in a strike, the police must maintain communication links with the employees and their union, and with the employer. On the other hand, the police officer is not the judge and jury of responsibilities relating to negotiations on questions of wages and working conditions or any other labour relations issue. Nor is the police officer called upon to intervene as between the bargaining parties, excepting only if violence or a threat to the community security arises.

20. Ultimately, as has been discussed elsewhere, the question of the applicability of the labour dispute guidelines depends on whether the activity at Queen's Park on 18 March should be viewed as a labour relations matter or as a general demonstration. As has been concluded, while the Queen's Park demonstration began as a labour picket, it either lost that character when it excluded MPPs from the Legislature of Ontario or if it was a picket line then it was in breach of the paramount parliamentary privilege. At that point, different laws apply, and different approaches to policing are relevant.

21. Again, whether or not members of the police forces present on 18 March breached their own guidelines is a question better answered by an inquiry or commission established under the *Police Services Act*.

22. However, review of the video tapes of the North Whitney Building incident and the North Frost Building incident disclose that while some attempts to communicate with the crowd were initiated, they were a far cry from a clear and effective communication to the crowd of the intentions of the OPP and the consequences of non-compliance with the requests made for co-operation.

23. Notably, at the North Frost Building although it is clear that at least some members of the crowd heard and understood Staff Sergeant Hough's request for co-operation, and responded that none would be forthcoming, the communications were not heard by all nor were they clear as to what was intended or what would occur in the absence of co-operation. Similarly, the aborted attempt made by Staff Sergeant McElary-Downer to communicate with the picket captain at the top of the North Whitney ramp yielded a negative response. However, this conversation was cut short by the first withdrawal of the CMU back down the North Whitney ramp.

24. At the North Frost Building, even less communication appears to have taken place through the OPP bullhorn. While Staff Sergeant Hough testified that he attempted to communicate with the crowd via the bullhorn, through the partially open doors, and again when he went forward into the crowd, it is clear from the videotapes that the CMU emerged from the building almost immediately after the doors were open, and that if there was verbal communication which was heard or understood by the crowd, there was certainly no opportunity for the crowd to react to it.

25. A final form of verbal communication is seen to come from front line officers in directing members of the crowd to "Move back". While this is a clear instruction, no verbal communication can be considered adequate when no time or opportunity is given to comply with it. As can be seen from the video tapes, the instructions to "Move back" were accompanied or followed almost immediately by pushing with shields on the part of the CMU.

26. Thus, in both of the more violent deployments of the CMU, while verbal communication was attempted in some form, it appears to have been insufficient to give all members of the crowd either the import of it, or the opportunity to react to it. If this communication had been effectively done, it may be that the physical confrontations between police and picketers might have been lessened or eliminated.

Additional Authorization for the Use of Force under Parliamentary Privilege

27. One of the principal issues arising out of questions raised by the Speaker before this Inquiry is the question as to whether or not the Speaker, in his own right, could order or direct the OPP to conduct the MPPs into the Legislative Chamber using as much force as necessary to accomplish the task. The Speaker's primary argument in this respect was that the ancient privilege residing in the Speaker included the right to exert the privilege with such force as circumstances required. These parliamentary privileges are addressed in Appendix E(1).

28. It must be borne in mind that the limits on use of force in the exercise or the protection of a right by anyone and everyone in the community have been established by the federal Parliament in the sections of the *Criminal Code* of Canada. The sections

relating to these limits, as seen above, are technical and complex. The courts have expended great efforts in attempting to interpret those provisions in such a way as would be understood by the police and other members of the community with respect to the use of force when authorized by law. Such enactments by Parliament are of little aid to the community if the community does not understand when force is authorized by law and when that force may be seen by the courts as excessive.

29. It is against this background of parliamentary action and the application of that action by judicial interpretation that we come to the direct or implied assertion by the Speaker of the right to authorize the use of force by anyone including the police in assisting the MPPs in gaining access to the Legislature. This order, by its express terms or by necessary implication, may be read or understood as authorizing the police to use such force as may be necessary in carrying out the order or directive. However, the terms of the order or directive are inherently ambiguous.

30. It may be that the Speaker was, in his mind, merely paraphrasing the general law of the land, authorizing as it does in the *Criminal Code* under stipulated circumstances "the use of such force as may be necessary." On the other hand, it might be read as being an attempt by the Speaker to authorize, in his own right as the Speaker with the inherent privileges as stated above, that the police, as a matter of law, to employ such force as may be necessary.

31. Metro and the OPP did not have any greater powers on 18 March than those provided by the *Criminal Code* and the common law.

32. Criminal law is of course within the exclusive jurisdiction of the Parliament of Canada in our Constitution. Substantive criminal law and procedural criminal law are both within the exclusive sovereignty of Parliament. Such authorization by the Constitution embraces almost the entire field of the criminal law, with the possible exception of the exclusive competency of Parliament to establish courts of criminal jurisdiction, an issue not here arising. Counsel for the Speaker, ingenious and articulate as they were, were not able to isolate any provision in the Constitution which purports to authorize an official, agent or any other person appointed by the province to establish rules of criminal law substantive or procedural in the face of the exclusive authority of Parliament over criminal matters. There are appendages and frills attaching to those constitutionally authorized jurisdictions of Parliament relating to the criminal power but none of these splinter issues and considerations arise here. The constitutional privileges expressed by the Speaker, as described above, come down to us from the unitary state of the United Kingdom. Division of plenary powers was and is unknown to the United Kingdom Parliament. The Canadian federal union and associated constitutional law requires that these privileges be adapted and adopted according to the Canadian constitutional arrangements.

33. It is not necessary to resolve this ambiguity for these purposes but rather simply to ensure for the future that all parties understand that the normal rules with respect to the use of force are applicable.

34. For the limited purposes of this Commission, it is sufficient to conclude that the use of force must be understood by all concerned to be measured by the yardstick provided by Parliament in the Criminal Code and elsewhere in federal legislation.

APPENDIX F

SCHEDULES

F(1) ORDER-IN-COUNCIL



Ontario
Executive Council
Conseil des ministres

Order in Council Décret

On the recommendation of the undersigned, the Lieutenant Governor, by and with the advice and concurrence of the Executive Council, orders that:

Sur la recommandation du soussigné, le lieutenant-gouverneur, sur l'avis et avec le consentement du Conseil des ministres, décrète ce qui suit:

the appended commission, made under the Public Inquiries Act, be approved.

Recommended

A handwritten signature in black ink, appearing to be 'C. H. King'.

Attorney General

Concurred

A handwritten signature in black ink, appearing to be 'R. W. I. [unclear]'.

Chair of Cabinet

Approved and Ordered

APR 17 1996

Date

A handwritten signature in black ink, appearing to be 'J. [unclear]'.
Lieutenant Governor

COMMISSION OF INQUIRY

WHEREAS on Monday, March 18, 1996 there occurred a series of events involving the Ontario Provincial Police, the Metropolitan Toronto Police, the Ontario Government Protective Service, picketers and demonstrators representing the Ontario Public Service Employees Union, the Speaker of the Legislative Assembly, Members of the Provincial Parliament, employees and officers of the Legislative Assembly, and other participants, government employees and members of the public;

These events have raised concerns among all parties in the Legislature and many Ontarians;

Under the Public Inquiries Act, R.S.O. c. P.41 the Lieutenant Governor in Council may, by commission, appoint one or more persons to inquire into matters of public concern; and

The Lieutenant Governor in Council considers it desirable to inquire into these events, which the Lieutenant Governor in Council declares to be of public concern.

Therefore, pursuant to the Public Inquiries Act:

ESTABLISHMENT OF THE COMMISSION

1. A commission be issued effective on April 17, 1996 appointing The Honourable Willard Z. Estey, Q.C. as commissioner.

TERMS OF REFERENCE

2. The commission shall inquire into the events of March 18, 1996 and the circumstances leading up to them including:
 - i) the actions, rights and responsibilities of all participants;
 - ii) the effect of those events on the operation and security of the Legislative Assembly, and on access to public buildings;
 - iii) the policies and responses of the police forces and the security agency referred to above; and
 - iv) such other matters relating to these events as the Commission considers appropriate.
3. The commission shall report its findings and make those recommendations it considers advisable.

4. The commission shall not express any conclusions regarding the criminal or civil liability of any person or organization.
5. This inquiry shall not interfere with the jurisdiction of bodies created by the Police Services Act, S.O. 1990, c.10.
6. The commission shall complete this inquiry and deliver its final report containing its findings, conclusions and recommendations to the Attorney General by October 17, 1996. The commission shall give the Attorney General interim reports at such times as the Attorney General may request on any matters that are considered urgent. The commission may make such additional interim reports as it considers appropriate to address urgent matters in a timely fashion. Each report must be in a form appropriate for release to the public, subject to the Freedom of Information and Protection of Privacy Act and other relevant laws.

RESOURCES

7. Within an approved budget the commission may retain such staff and advisors as it considers necessary in the performance of its duties. They shall be paid in accordance with Ontario Government guidelines. They shall be reimbursed for reasonable expenses incurred in connection with their duties in accordance with Management Board of Cabinet's Directives and Guidelines.
8. The commission may obtain such other services and things as it considers necessary in the performance of its duties within an approved budget. The commission shall observe Management Board of Cabinet's Directives and Guidelines and other applicable Government policies when it obtains services or things.
9. All ministries, boards, agencies and commissions of the Government of Ontario shall assist the commission to the fullest extent so that the commission may carry out its duties.

APPENDIX F(2)

VIDEOTAPES

The Commission received into evidence a number of videotapes which recorded the days' events. These tapes are attached to the original copy of this Report.

A listing of the video exhibits follows:.

1. GLOBAL TELEVISION NETWORK - OPSEU OPP Riots - May 7th 1996
2. GLOBAL TELEVISION NETWORK - OPSEU Footage
3. VIDEO SERVICES UNIT - OPSEU STRIKERS & OPP - 96.03.18
4. CITY TV - OPSEU Protest - Part 1 of 2
5. CITY TV - OPSEU Protest - Part 2 of 2
6. CFTO - Raw Footage of March 18 - Part 1 of 2
7. CFTO - Raw Footage of March 18 - Part 2 Of 2
8. CBLT News - Queen's Park, 18 March 1996
9. NATIONAL - Queen's Park March 18
10. ONTARIO PROVINCIAL POLICE - Queen's Park Demonstration
11. DEL TAYLOR - Local 318
12. MEDIASCAN CANADA INC. March 19, 1996- Violence on the OPSEU Picket Lines
19 items - ordered by Jim Malnar No 1 of 2
13. MEDIASCAN CANADA INC. March 18, 1996 - Picket Line Violence at the Legislature - ordered by Jim Malner No 2 of 2
14. ALL NEWS MEDIA COVERAGE - March 18, 1996 - Queen's Park OPSEU Protest.
15. STEVE GILES - OPSEU March 18, Riot Squad - 77 Wellesley - 2.00 minutes

APPENDIX F(3)

GLOSSARY

Area Command This term was used by the OPP to describe the area of their involvement at the Queen's Park outside the Legislative Precinct. It is a detachment which encompasses those parts of the Queen's Park Complex which are not included in the Legislative Precinct, as well as Osgoode Hall. The OPP maintains one officer, a Staff Sergeant, at this detachment, who co-ordinates the efforts of up to 109 OGPS officers.

Area Foot See Community Response Unit.

Canadian Labour Congress This organization co-ordinates and gives voice to members of the labour movement across the country.

CLC See Canadian Labour Congress

CMU See Crowd Management Unit.

Community Response Unit Formerly, and still commonly, known as the Area Foot Patrol, this is the unit of Metro officers in standard uniform which has general community policing responsibilities.

Crowd Management Unit An OPP unit trained and designed for the task of controlling crowd situations. It is comprised of two Emergency Response Team (ERT) Units. Members come from different detachments around Ontario, and serve with the CMU on an as-needed basis.

CRU See Community Response Unit.

Emergency Response Team An OPP unit of 16 officers which responds to a variety of lower risk situations, from crowd control to search and rescue. It is comprised of two squads, each with 8 officers, including a squad leader and an assistant squad leader.

ERT See Emergency Response Team.

Hard Tactical This is one of the two possible uniform configuration for the OPP's Crowd Management Unit (see also Soft Tactical). Officers in "Hard Tact" wear body armour and a helmet with a visor and neck protector, and carry a plexiglass shield and a baton.

Incident Commander A term used by the OPP to describe the officer in charge of a particular situation at a particular time. Also a training program and certification within the OPP, with two levels.

Legislative Precinct This term represents the area in the Queen's Park Complex which is under the control of the Speaker. **[Legislative Assembly Act]** It consists of the Legislative Building, the Legislative Grounds south of Wellesley St., the tunnel which connects the Legislative Building to the Whitney Building, and the basement and first three floors of the Whitney Building. The term also applies to the OPP detachment which patrols this area. This detachment consists of six officers, including a Staff Sergeant, and co-ordinates the activities of 50 OGPS officers.

Legislative Security Service The security service within the Legislative Precinct. It consists of a detachment of six OPP officers, plus 50 members of the OGPS.

LSS See Legislative Security Service.

Management Board Secretariat This government entity was the Government of Ontario's liaison with OPSEU for the purposes of both bargaining and strike planning. The Secretariat consists of those staff members of the Management Board of Cabinet who report through the Secretary, who is the equivalent of a deputy minister of a ministry.

MBS See Management Board Secretariat.

Metro Metropolitan Toronto Police Force.

Metro Labour Council This organization acts as an umbrella labour organization in the Metropolitan Toronto area.

MLC See Metro Labour Council

MTPF Metropolitan Toronto Police Force.

Office of the Assembly See Speaker's Office.

OFL See Ontario Federation of Labour.

OGPS See Ontario Government Protective Service.

Ontario Federation of Labour This organization acts as the voice of the labour movement in Ontario. It was instrumental in assisting OPSEU in carrying out the planned demonstration of 18 March.

Ontario Government Protective Service This organization is responsible for security at Ontario government buildings. Its members are not police officers, but are sworn in as Special Constables under the *Police Services Act*. Its members are unionized, and are represented by OPSEU.

Ontario Public Service Approximately 65,000 public sector employees were members of this bargaining unit, which is represented by OPSEU. This is the unit that was on strike from February 26, 1996 through March XX, 1996.

Ontario Public Service Employees Union The Union represents approximately 100,000 employees in the public and private sector across the province. Its members are members of approximately 450 different bargaining units, including the Ontario Public Service.

Ontario Realty Corporation This Crown corporation acts as the "landlord" for Ontario government buildings. It is responsible for a variety of services, including maintenance, service and cleaning. The Ontario Realty Corp. provided these services in the Legislative Building under contract with the Speaker.

OPP Ontario Provincial Police.

OPS See Ontario Public Service.

OPSEU See Ontario Public Service Employees Union.

ORC See Ontario Realty Corporation.

Picket Captain Members of OPSEU who were in charge of picket lines at various locations throughout the strike. On March 18, 1996, they were identifiable by the orange vests which they wore. The term was also used in evidence to describe the Security Marshals, who were also clad in orange vests. This report uses the term "picket captain" to refer to the former, and "security marshals" to refer to the latter.

POU See Public Order Unit.

Protocol A term employed in labour law to describe an agreement between labour and management as to the length of time people may be detained by a picket line for the purposes of disseminating information, prior to entering the employer's establishment.

Public Order Unit A Metro unit trained and designed to respond to crowd control situations. It is the Metro equivalent of the OPP's Crowd Management Unit.

RIC Regional Intelligence Co-ordinator of the OPP

Security marshals Members of two teams assembled by OPSEU and the OFL for the purpose of maintaining order on March 18, 1996. See also "picket captain".

SMEAC This term refers to a document drawn up by the OPP and approved by the Sergeant-at-Arms and the Speaker for security at the Legislative Precinct during the OPSEU strike. The name stems from the format of the report, which discussed in serial section the Situation, Mission, Execution, Assignments and Communication.

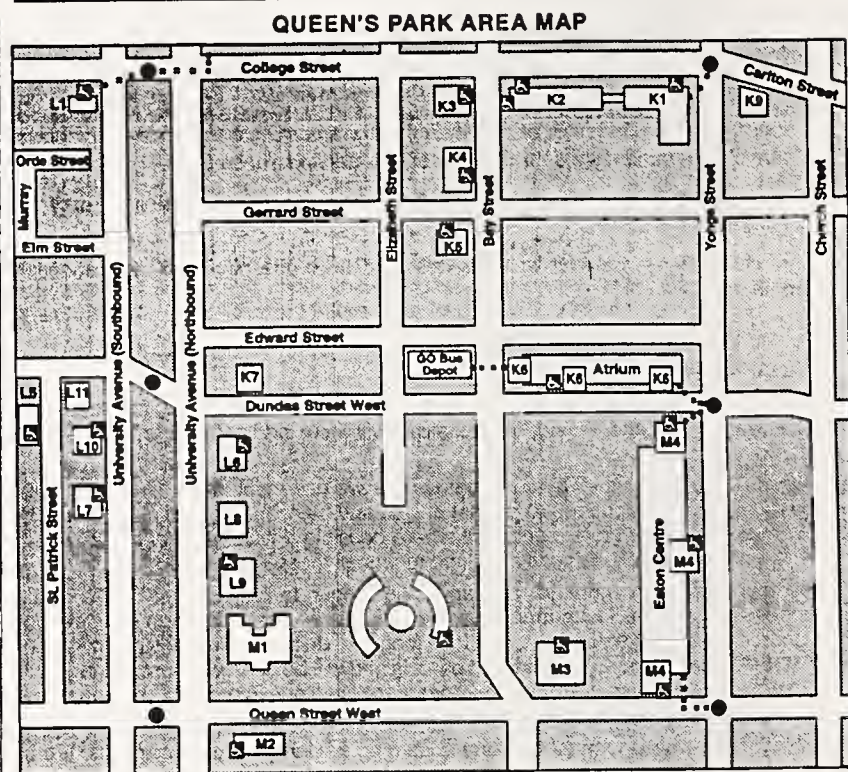
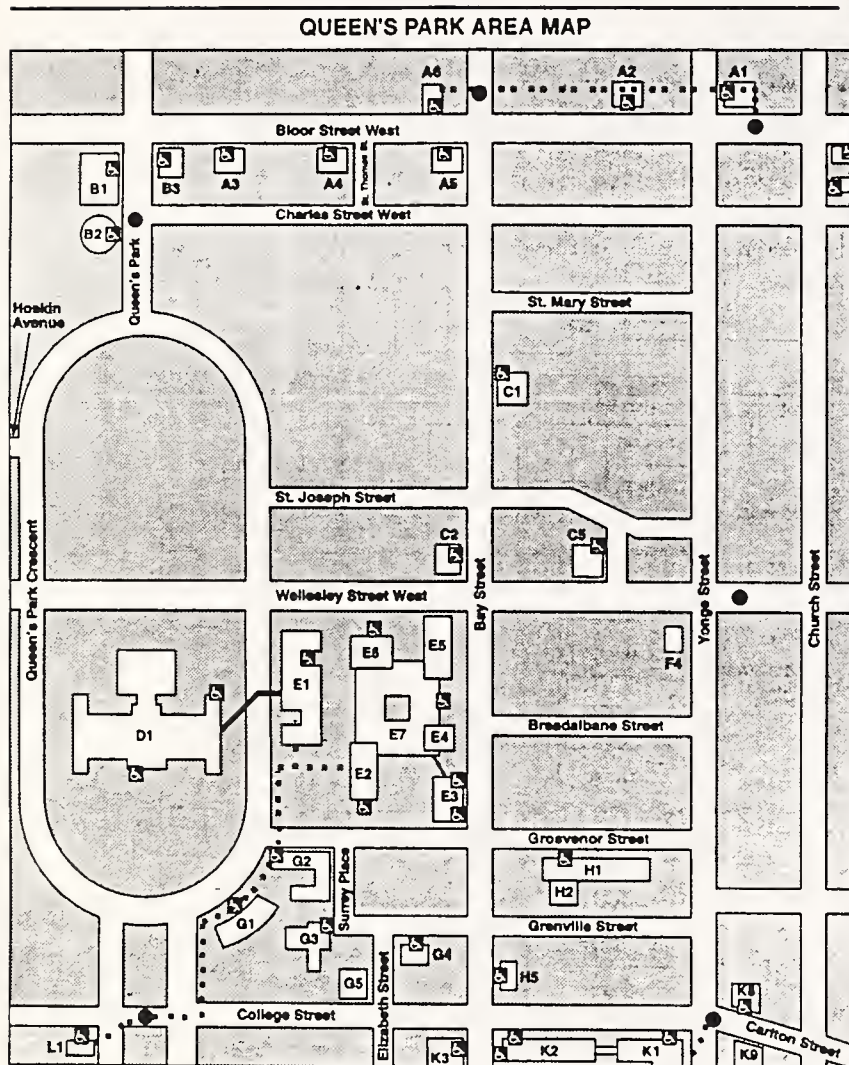
Soft Tactical This is one of the two possible uniform configurations for the OPP's Crowd Management Unit (see also Hard Tactical). Officers in Soft Tactical gear wear a regular police uniform, without body armour or shield.

Speaker's Office Formally known as the Office of the Assembly, this is a separately funded entity which controls the workings of the Legislative Building and Chamber. At the head is the Speaker of the House.

Strike Task Force A number of "task forces" were established to deal with the event of a strike. Metro had established a Strike Task Force, as had the Government of Ontario and OPSEU.

APPENDIX F(4)

MAP OF THE QUEEN'S PARK AREA



Queen's Park and Vicinity

KEY ● Subway □ Wheelchair Access — Tunnel (Entrance from first basement) ... Subway tunnels

LEGEND

- | | | | |
|--------------------------------|---------------------------|--------------------------------------|---------------------------|
| A1 - 2 Bloor St. E. | D1 - Legislative Building | H1 - 25 Grovenor St. | L1 - 700 University Ave. |
| A2 - 2 Bloor St. W. | E1 - 99 Wellesley St. W. | (George Drew Bldg.) | (Ont. Hydro) |
| A3 - 151 Bloor St. W. | E2 - 80 Grovenor St. | H2 - 26 Grenville St. | L5 - 132 St. Patrick St. |
| A4 - 101 Bloor St. W. | (Heppburn Block) | (Coroner's Office) | L6 - 439 University Ave. |
| A5 - 77 Bloor St. W. | E3 - 880 Bay St. | H3 - 801 Bay St. | L7 - 400 University Ave. |
| A6 - 80 Bloor St. W. | E4 - 900 Bay St. | (Provincial and Small Claims Courts) | L8 - 393 University Ave. |
| A7 - 175 Bloor St. E. | (Mowat Block) | K2 - 777 Bay St. | L9 - 361 University Ave. |
| A8 - 625 Church St. | E5 - 900 Bay St. | (College Park) | (Court House) |
| B1 - 100 Queen's Park | (Hearst Block) | K3 - 790 Bay St. | L10 - 481 University Ave. |
| (Royal Ontario Museum) | E6 - 77 Wellesley St. W. | (Attorney General) | L11 - 250 Dundas St. W. |
| B2 - 100 Queen's Park | (Ferguson Block) | K4 - 720 Bay St. | M1 - 130 Queen St. W. |
| (Planetarium) | E7 - 900 Bay St. | (Lucif Place) | (Osgoode Hall) |
| B3 - 125 Queen's Park | (Mackdonald Block) | K5 - 700 Bay St. | M2 - 145 Queen St. W. |
| (Q.P. Entrance) | F4 - 558 Yonge St. | (Lucif Place) | M3 - 60 Queen St. W. |
| (Ombudsman Office) | G1 - 7 Queen's Park Cr. | K6 - Atrium on Bay, includes: | (Old City Hall) |
| - 157 Bloor St. W. | (Frost Building South) | 1 Dundas St. W. | |
| (Bloor St. Entrance) | G2 - 95 Grovenor St. | (North Tower) | |
| (Public Complaints Commission) | (Frost Building North) | 250 Yonge St. | |
| C1 - 1075 Bay St. | G3 - 2 Surrey Place | (East tower) | |
| (The Citadel) | G4 - 77 Grenville St. | 20 Queen St. W. | |
| C2 - 56 Wellesley St. W. | G5 - 78 College St. | (South Tower) | |
| C3 - 24 Wellesley St. W. | | | |
| (Q.P. Credit Union) | | | |

APPENDIX F(5)

ORDER OF JUSTICE WINKLER DATED MARCH 18, 1996

96-1611 -
Court File No.

**ONTARIO COURT
(GENERAL DIVISION)**

THE HONOURABLE MR. JUSTICE)
WINKLER)
)

MONDAY, THE 18TH DAY
OF MARCH, 1996

B E T W E E N :

**THE HONOURABLE ALLAN K. MCLEAN, M.P.P., in his capacity as
SPEAKER OF THE LEGISLATIVE ASSEMBLY OF ONTARIO**

Applicant

- and -

**LEAH CASSELMAN AND OTHER PERSONS OBSTRUCTING
ACCESS TO, OR EGRESS FROM, THE LEGISLATIVE PRECINCT**

Respondents

O R D E R

THIS MOTION, made by the Applicant herein in the matter of an intended application, was heard this day at Toronto.

ON READING the materials herein filed, and upon hearing the submissions of counsel for the parties;


1. **THIS COURT ORDERS** that the respondents. and anyone having knowledge of this Order, shall not impede, obstruct, restrict, or delay free access or egress into or from the East Door of the Main Legislative Building, and the North Door of the Whitney

Building, for Members of the Provincial Parliament and essential staff of the Legislative Assembly.



S. L. RICHARDS
Deputy Local Registrar

MCK\51313\00002\ORDER.DOC



SEP 10 1996

PER-PAU

Mr Justice Winkler

Order

March 13/96

This Court orders that Defendants and any one having notice of this Order shall not impede, obstruct, restrict, or delay free access to egress into or from the East Door of the Main Legislative Building and the North Door of the Whitney Building, of Members of the Provincial Parliament and essential staff of the Legislative Assembly.

[Signature]

Court File — in the matter of
an anticipated application

ENTERED AT/INSCRIT À TORONTO
ON/BOOK NO:
LE/DANS LE REGISTRE NO:

MAR 18 1996

PER/PAR: *[Signature]*

Court File No.

SPEAKER OF THE LEGISLATIVE ASSEMBLY OF ONTARIO v. LEAH CASSELMAN, et al

**ONTARIO COURT OF JUSTICE
(GENERAL DIVISION)**

O R D E R

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Solicitors for the Applicant/Moving Party

the Legislative Precinct by Members of Provincial Parliament and essential staff of the Legislative Assembly. To be clear, this is not a motion to restrain picketing but rather to allow unobstructed access or egress at two locations; the east door to the Legislature Building at Queen's Park in Toronto, and the north door of the Whitney Block. The members of OPSEU have been engaged in a legal province-wide strike against the Government of Ontario for several weeks.

The Speaker is the representative of the Legislative Assembly. As such, the Speaker presides over all deliberations and debates of the Legislative Assembly, is guardian over all historical rights and privileges of the Assembly and is responsible for the administration of the affairs of the Assembly. These latter functions are carried out through the Legislature's administrative arm, known as the Office of the Assembly. The Speaker has, in addition, responsibility for security within physical areas falling under his jurisdiction.

The physical area over which the Speaker's jurisdiction extends is called the "Legislative Precinct". There, acting on behalf of the Legislative Assembly, the Speaker exercises control so as to ensure that the elected members of the legislature may perform their parliamentary work. This area is geographically known generally as Queen's Park, and includes, in addition to the Legislature Building, various other government buildings including the Whitney Block.

The offices of the Legislative Assembly are located at the Legislature Building and in

portions of the Whitney Block. The Legislative Assembly is not involved in the current labour dispute between the government and OPSEU. The staff of the Office of the Assembly are not members of OPSEU.

Today is the first sitting day of the spring session of the Legislative Assembly, hence the return of the members for the current term. Since the onset of the province-wide strike there has been picketing and demonstration at Queen's Park, but until as recently as several days ago, there has been no interference with members of the legislature or Office of the Assembly staff. When incidents of interference began, Claude L. Des Rosiers, Clerk of the Legislative Assembly, wrote to the union asking that the interference be halted. No response was received to this letter.

This morning a large demonstration attended by hundreds of people in support of striking OPSEU workers took place at Queen's Park. The demonstrators formed a tight cordon, and blocked all entrances to Queen's Park, chanting "No One In, No One Out!" As a result of the blockade, lengthy delays were occasioned to members of the legislature and to employees. Many persons were denied entry. Mr. Todd Decker, a Committee Clerk at the Assembly testified that when he tried to enter Whitney block, he was informed by demonstrators that the building was closed for the day, and testified that it was impossible to get around the hundreds of people blocking the door. Further, Mr. Decker indicated he felt it would be unsafe to try and gain entry to the building.

In consequence, the Speaker seeks this injunction, not to restrain the picketing or demonstrating, but to obtain unobstructed passage for members and essential staff at the two entrances mentioned above.

Security at the legislature is a divided responsibility. Suffice it to say that the security outside the buildings is the responsibility of Metro Police. Metro will regulate only breaches of the peace, taking the position that this is a labour dispute.

Counsel for the Speaker takes the position that the Legislative Assembly is a separate, neutral entity from the Ontario government, and that this is not a labour dispute within the meaning of s. 102 of the *Courts of Justice Act*, R.S.O. 1990, c.C-43. Further, they assert that the provisions of that section regarding notice are not material. I disagree.

Section 102(1) of the *Courts of Justice Act* defines a labour dispute:

In this section, "labour dispute" means a dispute of difference of concerning terms, tenure or conditions of employment or concerning the association or representation of persons in negotiating, fixing, maintaining, changing or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee.

The legislature and related buildings at Queen's Park are the headquarters of the Government of Ontario. Thus, for the purposes of the province-wide strike of OPSEU members, this location may be said to provide the central focus for the picketing and demonstration. Section 102(1) specifies that the dispute may constitute a labour dispute,

"regardless of whether the disputants stand in the proximate relation of employer and employee". Cases referred to me such as *Ford Motor Co. of Canada v. McDermott* (1978), 20 O.R. (2d) 160 (H.C.J.) are clearly distinguishable on their facts.

The evidence before me establishes clearly, nonetheless, that this is a proper case for an abridgement of notice, as provided for in s. 102(8) of the Act. Section 102(8) states:

Where notice as required by subsection (6) is not given, the court may grant an interim injunction where,

- (a) the case is otherwise a proper one for the granting of an interim injunction;
- (b) notice as required by subsection (6) could not be given because the delay necessary to do so would result in irreparable damage or injury, a breach of the peace, or an interruption in an essential public service;
- (c) reasonable notification, by telephone or otherwise, has been given to the persons to be affected or, where any of such persons are members of a labour organization, to an officer of that labour organization or to the person authorised under section 89 of the *Labour Relations Act* to accept service of process under that Act on behalf of that labour organization or trade union, or where it is shown that such notice could not have been given; and
- (d) proof of all material facts for the purposes of clauses (a), (b) and (c) is established by oral evidence.

The description of the demonstration makes it clear that the blockade outside the legislature is, it seems to me, an interruption of "an essential public service". Notice was provided to responding counsel sufficient in these circumstances to satisfy s. 102(8)(c). All of these

material facts have been proven through *viva voce* evidence led in this proceeding, and for reasons which follow, I am of the opinion that this is a proper case for granting an injunction. Accordingly, leave to provide short notice is granted. In any event, notice of the Speaker's position was given *de facto* by the Speaker's letter to the union of March 14, 1996.

In cases of this nature the three branches of the test to be met are:

- 1) Is there a *prima facie* case for the relief sought;
- 2) Will irreparable harm result if the injunction is not granted;
- 3) Does the balance of convenience favour the applicant.

Sopinka and Cory JJ., writing for the court, considered the proper approach to this test in *R.J.R. MacDonald v. Canada (A.G.)*, [1994] 1 S.C.R. 311 at pp. 334:

Metropolitan Stores adopted a three-stage test for courts to apply when considering an application for either a stay or an interlocutory injunction. First, a preliminary assessment must be made of the merits of the case to ensure that there is a serious question to be tried. Secondly, it must be determined whether the applicant would suffer irreparable harm if the application were refused. Finally, an assessment must be made as to which of the parties would suffer greater harm from the granting or refusal of the remedy pending a decision on the merits.

The court then noted that the "serious question" threshold, although generally accepted in Canadian courts, will be replaced by the *prima facie* case threshold for the first branch of the three-part test, in circumstances where the result of the interlocutory motion will effectively amount to the final determination of the matter, or where the issue is a simple question of law alone. Sopinka and Cory JJ. stated at p. 338-339:

Two exceptions apply to the general rule that a judge should not engage in an extensive review of the merits. The first arises when the result of the interlocutory motion will in effect amount to a final determination of the action. This will be the case either when the right which the applicant seeks to protect can only be exercised immediately or not at all, or when the result of the application will impose such hardship on one party as to remove any potential benefit from proceeding to trial. Indeed Lord Diplock modified the *American Cyanamid* principle in such a situation in *N.W.L. Ltd. v. Woods*, [1979] 1 W.L.R. 1294, at p. 1307:

Where, however, the grant or refusal of the interlocutory injunction will have the practical effect of putting an end to the action because the harm that will have been already caused to the losing party by its grant or its refusal is complete and of a kind for which money cannot constitute any worthwhile recompense, the degree of likelihood that the plaintiff would have succeeded in establishing his right to an injunction if the action had gone to trial is a factor to be brought into the balance by the judge in weighing the risks that injustice may result from his deciding the application one way rather than the other.

Cases in which the applicant seeks to restrain picketing may well fall within the scope of this exception. Several cases indicate that this exception is already applied to some extent in Canada.

In *Trieiger v. Canadian Broadcasting Corp.* (1988), 54 D.L.R. (4th) 143 (Ont. H.C.), the leader of the Green Party applied for an interlocutory mandatory injunction allowing him to participate in a party leaders' debate to be televised within a few days of the hearing. The applicant's only real interest was in being permitted to participate in the debate, not in any subsequent declaration of his rights. Campbell J. refused the application, stating at p. 152:

This is not the sort of relief that should be granted on an interlocutory application of this kind. the legal issues involved are complex and I am not satisfied that the applicant has demonstrated there is a serious issue to be tried in the sense of a case with enough legal merit to justify the extraordinary intervention of this court in making the order sought without any trial at all. [emphasis added]

In *Tremblay v. Daigle*, [1989] 2 S.C.R. 530, the appellant Daigle was appealing an interlocutory injunction granted by the Quebec Superior Court enjoining her from having an abortion. In view of the advanced state of the appellant's pregnancy, the Court went beyond the issue of whether or not the

interlocutory injunction should be discharged and immediately rendered a decision on the merits of the case.

The circumstances in which this exception will apply are rare. When it does, a more extensive review of the merits of the case must be undertaken. Then when the second and third stages of the test are considered and applied the anticipated result on the merits should be borne in mind.

In my opinion this is the proper approach to be applied in the present circumstances.

The strong *prima facie* case, which in my view is made out here, is based on two assertions.

First, that the obstruction of members of the legislature constitutes a breach of parliamentary privilege. I am guided here by the words of McLachlin J. in *New Brunswick Broadcasting Co. v. Nova Scotia (Speaker of the House of Assembly)*, [1993] 1 S.C.R. 319 at 387-389, and also at 378-379:

It has long been accepted that in order to perform their functions, legislative bodies require certain privileges relating to the conduct of their business. It has also long been accepted that these privileges must be held absolutely and constitutionally if they are to be effective; the legislative branch of our government must enjoy a certain autonomy which even the Crown and the courts cannot touch...

In summary.... Canadian legislative bodies possess such inherent privileges as may be necessary to their proper functioning. These privileges are part of the fundamental law of our land, and hence are constitutional. (emphasis added)

These parliamentary rights and privileges are an inherent part of our political system, necessary to enable the legislature to govern effectively. They are described in Maingot, *Parliamentary Privilege in Canada*, (1982) at pp. 12-13:

Parliamentary privilege, which is an important part of the law and custom of Parliament, is part of the general and public law of Canada. ...parliamentary privilege is the necessary immunity that the law provides for members of

Parliament, and for members of the legislature of each of the ten provinces and two territories on order for these legislators to do their legislative work. It is also the necessary immunity that the law provides for any one taking part in a proceeding in Parliament or in a legislature. Finally, it is the authority and power of each House of Parliament and its legislature to enforce that immunity... The legislative body needs this legal protection or immunity to perform its function and to defend and vindicate its authority and dignity. Members of the legislative body enjoy these rights and immunities because the legislature cannot act or perform without the unimpeded use of the services of its members.

It is a breach of parliamentary privilege to obstruct, interfere or detain a member of the Legislative Assembly. The *Legislative Assembly Act*, R.S.O. 1990, c. L.10 provides in s. 46, in relevant part, that:

(1) The Assembly has all the rights and privileges of a court of record for the purposes of summarily inquiring into and punishing, as breaches of privilege or as contempts and without affecting the liability of the offenders to prosecution and punishment criminally or otherwise, according to law, independently of this Act, the acts, matters and things following:

1. Assault, insult or libel upon a member of the Assembly during a session of the Legislature or during the twenty days preceding or the twenty days following a session.
2. Obstructing, threatening or attempting to force or intimidate a member of the Assembly.
4. Assault upon or interference with an officer of the Assembly while in the execution of his or her duty.
11. Causing or effecting the arrest or detention of a member of the Assembly for any cause or matter of a civil nature during a session of the Legislature or during the twenty days following a session

I also find apposite the decision of the Supreme Court of Canada in *B.C.G.E.U. v. British Columbia (Attorney General)*, [1988] 2 S.C.R. 214 at pp. 228-229, where Dickson C.J. considered the supremacy of the rule of law in a case where striking workers were

picketing a court house:

The Union is advancing certain *Charter* arguments in the present proceedings. I will deal with those arguments shortly. For the moment I wish to highlight certain sections of the *Charter* which, it seems to me, are a complete answer to anyone seeking to delay or deny or hinder access to the courts of justice in this country. Let us look first at the preamble to the *Charter*. It reads:

"Whereas Canada is founded upon principles that recognize the supremacy of God and the rule of law". So we see that the rule of law is the very foundation of the *Charter*. Let us turn then to s. 52(1) of the *Constitution Act, 1982* which states that the Constitution of Canada is the Supreme Law of Canada and any law that is inconsistent with the provisions of the Constitution is, to the extent of the inconsistency, of no force or effect.

The obstruction of the access and egress of Members and employees to the legislative buildings, as distinguished from picketing or demonstrating, is it seems to me, analogous to the picketing of a court house. As stated by Dickson C.J. in *B.C.G.E.U., supra*, at pp. 232-233:

Picketing of a commercial enterprise in the context of an ordinary labour dispute is one thing. The picketing of a court house is entirely another. A picket line both in intention and in effect, is a barrier. By picketing the court houses of British Columbia, the appellant Union, in effect, set up a barricade which impeded access to the courts by litigants, lawyers, witnesses, and the public at large. It is not difficult to imagine the inevitable effects upon the administration of justice... The point is clear. Picketing a court house to urge the public not to enter except by a permission of the picketers would lead to a massive interference with the legal and constitutional rights of the citizens of British Columbia.

Accordingly, barricading the legislative buildings at Queen's Park such that Members of Provincial Parliament and essential service workers can neither enter nor exit the buildings, thereby interrupting the work of the legislature, constitutes a violation of parliamentary privilege, and consequently a breach of one of the fundamental tenets of our

political system A strong *prima facie* case has been made out.

The second ground advanced in support of the argument that there is a *prima facie* case, is that obstruction is *per se* unlawful. In light of my disposition on the first point, it is unnecessary to deal with the second ground.

Similarly, such interference with legislative function causes irreparable harm, which cannot be remedied in damages.

The third element of the test is balance of convenience. In this respect a court must take into account the interest of the Speaker, the Union, and the public interest. See *D.G. (Man.) v. Metropolitan Stores (MTS) Ltd.*, [1978] 1 S.C.R. 110 and *R.J.R. MacDonald*, *supra*. On balance, the public interest, in my view, must prevail in the present circumstances. Delay and obstruction of entry and egress of Members and essential staff of the Legislative Assembly strikes a blow at the very heart of our society and is unacceptable.

The essential elements for an interlocutory injunction are therefore met. An order shall therefore go in the form agreed upon by counsel.


WINKLER J.

Court File No.: In the Matter of an
Intended Application

ONTARIO COURT OF JUSTICE
(GENERAL DIVISION) -

B E T W E E N :

THE HONOURABLE ALLAN K.
MCLEAN, M.P.P., in his capacity as
SPEAKER OF THE LEGISLATIVE
ASSEMBLY OF ONTARIO

Applicant

- and -

LEAH CASSELMAN, AND OTHER
PERSONS OBSTRUCTING ACCESS TO,
OR EGRESS FROM, THE
LEGISLATIVE PRECINCT

Respondents

REASONS FOR DECISION

Winkler J.

APPENDIX F(6)

CONDUCT OF HEARINGS

The Commission heard testimony and received evidence over the course of 24 days between 13 May, 1996 and 18 June, 1996. In addition to videotape, photographic and documentary evidence, testimony was given by the following individuals:

1. Mr. Claude DesRosiers - Clerk of the Legislative Assembly
2. Mr. Malcolm Smeaton - Head - Corporate Response Team - Management Board Secretariat
3. Superintendent William Currie - Regional Commander of the OPP's Greater Toronto Region
4. Superintendent Paul Shrive - OPP CMU Training
5. Mr. Thomas Stelling - Sergeant-at-Arms of the Legislative Assembly
6. Staff Sergeant E. Wes Ryan - Metropolitan Toronto Police Force
7. Staff Inspector Ronald Taverner - Commander of Metro's Public Order Unit and Industrial Liaison Division
8. Superintendent James Parkin - Commander of Metro's 52 Division
9. Staff Sergeant Allan Hough - OPP Commander of the Legislative Security Service
10. Mr. Gary Adams - OPSEU Grievance Officer, Strike Task Force member and security marshall team leader
11. Mr. Don Sheppard - OPSEU Local President for the Legislative Building
12. Staff Inspector Marlene Watson - Metropolitan Toronto Police Force
13. Sergeant Daniel Pearson - Metropolitan Toronto Police Force
14. Ms. Barbara Cowieson - Deputy Executive Director of the Progressive Conservative Caucus
15. Ms. Patricia Sorbara - Principal Secretary to the Leader of the Opposition, Liberal Caucus
16. Inspector Jay Hope - OPP Incident Commander at Queen's Park
17. Mr. Gavin Leeb - OPSEU Grievance Officer, Strike Task Force member and event organizer
18. Mr. David Cooke, MPP - House Leader of the New Democratic Party Caucus
19. Staff Sergeant Robin McElary-Downer - Commander of OPP Greater Toronto Region CMU
20. Mr. Allan McLean - Speaker of the Legislative Assembly
21. Mr. Paul Tranquada - Acting Executive Director, Assembly Services
22. Julien Marquis - OPSEU member

After all of the evidence had been taken, Commission Counsel prepared a summary of the evidence and provided the parties with their written submissions. Counsel for the parties before the Commission responded with written argument on the evidence and the law.

The Commission then heard argument from counsel for the parties over the course of 6 days, including reply submissions.

